OVERSIGHT HEARING ON VETERANS PREFERENCE IN THE FEDERAL GOVERNMENT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
EDUCATION, TRAINING AND EMPLOYMENT

OF THE

COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES

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OVERSIGHT HEARING ON VETERANS PREFERENCE IN THE FEDERAL GOVERNMENT

THURSDAY, APRIL 7, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON EDUCATION, TRAINING,
AND EMPLOYMENT,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 334, Cannon House Office Building, Hon. Marvin Leath (chairman of the subcommittee) presiding.

Present: Representatives Leath, Edgar, and Evans.

OPENING STATEMENT OF CHAIRMAN LEATH

Mr. LEATH. The subcommittee will come to order.

Our good colleague, Mr. Solomon, phoned in this morning and said that he was sick, and I think the other two members are outside yet. I don't believe Mr. Devine is here yet, but we will go ahead with a short opening statement and, if he is not here by then, we will proceed to the next witness.

Since 1865, veterans have been given preference in Federal employment. The most comprehensive legislation in this regard was passed during World War II. This brought together in one law the preferences granted veterans by previous legislation and executive and administrative orders.

Since World War II, there have been a number of amendments to the Veterans Preference Act, as well as other programs Congress has approved to assist veterans in obtaining Federal employment.

For example, a successful program has been the Veterans Readjustment Appointment Authority which has been the basis for many Vietnam veterans obtaining Federal employment in the Federal Government. Another program authorized by the Civil Service Reform Act of 1978 provides special hiring authority for 30 percent or more disabled veterans in the Federal Government.

Currently a subject of much concern to veterans and their dependents is the changes that have been issued regarding the retention of veterans in Federal employment. The Director of the Office of Personnel Management has been invited to review these programs, the Veterans Preference Act of 1944, as amended, and to provide the subcommittee with an assessment of the changes in the regulations regarding retention rights as they may impact on veterans preference laws or in any way reduce the effect of veterans preference in a reduction in force.

Representatives of the major national veterans organizations have also been invited to review these programs for the subcommittee.

Mr. Devine, I assume, still isn't here, so we will ask Colonel Passamaneck, special legislative consultant for AMVETS, to please come to the witness table.

Colonel, we are delighted to welcome you here this morning. Of course, we would like for you to summarize your testimony, if you would, and rest assured that your entire statement will be included as part of the record.

STATEMENT OF LT. COL. DAVID J. PASSAMANECK, USA (RETIRED); SPECIAL LEGISLATIVE CONSULTANT TO ROBERT MARTIN, THE NATIONAL COMMANDER, AMVETS

Colonel PASSAMANECK. Thank you, sir.

With the committee's indulgence, my statement is rather brief. It won't need much summarizing.

I want to thank the committee for the privilege of appearing here. AMVETS has always believed very strongly in the sanctity and importance of veterans preference hiring and retention in the Federal Civil Service. We believe it should be a lifetime right of war veterans. We have always maintained that it should not be terminated by years or other delimiting factors after separation from service.

We believe the varying levels of sacrifice of individual veterans, whether they have been in combat or noncombat positions and so forth, should not be relevant to the retention or exercise of veterans preference, other than with respect to additional preferences, of course, which are given to disabled veterans according to their disability.

The tenacious efforts during the Carter administration of various interest groups, antithetical to national defense and military service, to curtail or completely remove veterans preference was consistent, we believe, with the quasi-treasonous conduct of so many inhabitants of this country during the Vietnam war, conduct which contributed in no small way to the tragic result of that war. Fortunately, those efforts were almost entirely unsuccessful. They only succeeded in scornfully punishing retired veterans with the rank of O–4 or above by limiting their use of preference under Public Law 95–454. However, those who would denigrate military service by chipping away at veterans preference have not let up in their incessant efforts.

Even more insidious than the campaign to legislate curtailment of veterans preference are the widespread practices thoughout all branches of the Government to effectively thwart the intent of the veterans preference laws by systematic hiring and promoting nonveterans in preference to equally or more qualified veterans in noncompetitive positions. A cursory examination of the hiring and promotion practices of the VA Central Office and the Board of Veterans Appeals, for example, makes one wonder whether veterans preference is not just a public relations gimmick rather than an operative policy, at least at the higher levels of Government.

One of the most effective methods of undermining veterans preference has been the practice of contracting out for services, particularly in those fields of employment which have traditionally been subject to what amounts to an absolute preference for veterans. The Veterans' Administration has been prominent among the agencies using this back door way to avoid veterans preference.

AMVETS advocates the repeal of the restrictions on veterans preference enacted as Public Law 95-454 and opposes all efforts to curtail or abandon the current preference for veterans.

With regard to the pending regulatory changes concerning reduction-in-force which you, sir, requested we comment on, at this time the AMVETS feels that we do not really have sufficient evidence or indication as to how this thing will impact. We don't particularly like the sound of some of these regulatory changes, but we cannot honestly say that we are going to oppose them. We just would like to have a little more time to evaluate the situation.

True enough, the position is to keep veterans preference in the No. 2 position in order of priority for reduction-in-force. That sounds good. However, we are a little bit leery of what is going to happen if they move performance around ahead of longevity and how veterans preference is going to be impaired, if at all, by this change. We would prefer to reserve judgment on that issue at the present time.

That concludes my statement, sir. If there are any questions, I would be glad to answer them.

[The statement of Lt. Col. David Passamaneck appears at p. 27.]

Mr. LEATH. Thank you, Colonel.

Would you characterize the present administration as being somewhat antiveterans preference?

Colonel PASSAMANECK. No, sir, not necessarily. I would characterize the current administration as sincerely trying to reduce excesses in Government employment and perhaps not being sensitive enough to the legitimately special place which veterans should occupy in that picture. I don't think there is any conscious antiveteran ideas or leaning in the administration, no, sir.

Mr. LEATH. Would you view that, possibly outside of the Department of Defense and the Veterans' Administration, though, that most of the agencies really don't pay a great deal of attention to veterans preference?

Colonel PASSAMANECK. Yes, I would regrettably have to agree with that, sir.

Mr. LEATH. Mr. Evans, do you have any questions.

Mr. EVANS. No questions.

Mr. LEATH. Thank you, Colonel.

We have some other questions that we will submit to you for the record.[1]

Colonel PASSAMANECK. Thank you, sir.

Mr. LEATH. Good morning, Dr. Devine. We went ahead and took one witness before you got here. We are glad to welcome you before the committee.

As you know, it is our practice for you to summarize your testimony if possible. Of course, we will include your entire statement

[1] See p. 30.

in the record. That gives us a little more time to perhaps have an interchange of thoughts here. So we welcome you and you may proceed as you see fit.

STATEMENT OF DONALD J. DEVINE, DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT

Dr. DEVINE. Thank you very much, Mr. Congressman. I appreciate the invitation to be here today, and I will just take a few minutes to summarize my testimony. I would be happy to answer any questions you may have.

We have taken our obligation to veterans' preference very seriously in this administration. We keep in constant touch with the representatives of the veterans' organizations. This administration has been very committed to the veterans readjustment program.

One of the first things I did on assuming office was coming before this subcommittee and testifying in favor of extending the VRA program. We believe the program has been very successful. We have revised the program and given it greater emphasis. We think that its record of having 5 percent of all Government new hires is a very strong record. Approximately 35 percent of these new hires were minorities and 9 percent women. Since the program began a decade ago, more than 190,000 Vietnam era veterans have entered Government service. We think the program has been extremely successful.

Of course, it is not the only program for veterans entering the Government. Last year in fiscal year 1982, the first half, which is the last we have data for, 32 percent of all new hires were veterans. Our temporary appointments for severely disabled veterans, those with 30 percent or more disabled, those appointments have been going very strongly, too. The first half of fiscal 1982 had 1,600 severely disabled veterans appointed, about half of whom received special noncompetitive, temporary appointments. The 3,100 selected in fiscal 1981 under this administration was up 80 percent over the preceding year. Of course, we can't keep that kind of increase going, but we made major changes in 1981 and we have made progress since then.

We have also had some complaints that OPM was not exercising evaluation oversight of the veterans appointments and our agency compliance and evaluation units now included veterans employment programs as one of the issues stressed in all agency level evaluation reviews beginning in fiscal year 1981 and continuing throughout fiscal year 1982. We continue to exercise our oversight responsibilities for veterans employment programs in our evaluations at both the national and local levels where we identify problems.

Also in 1982 we began taking over from EEOC the Federal affirmative action program for disabled veterans. We published final regulations in the Federal Register on January 4 of this year. Our regulations and guidance are specifically devised to give agency flexibility in meeting the aims of the program. We require agencies to analyze their work force data on employment of disabled veterans, to identify deficiencies in the employment and advancement of

these veterans, and to devise corrective actions and implement these planned actions.

We have not required goals or rigid quotas or timetables. We believe these too often become floors and restrict opportunities rather than promoting them. We do not require agencies to conduct extensive comparison of general employment statistics but, rather, we provide them with statistical pictures taken from our central personnel data file, which allows agencies to assess both where they are and where it is feasible to go in the future.

We have also left it to agency discretion, subject, of course, to our oversight, to determine for which installation and organizations below the headquarter level will have separate plans.

Our streamlining activities allow agencies more time and effort to get the job done, rather than expending excessive amounts of time computing statistics and completing forms.

We are in the process now of reviewing selected agency plans and hope to have the accomplishment report of all executive agency branches to you later this year, as required under title 38 of the United States Code. Through these efforts we look forward to an improved employment picture for disabled veterans without the controversy and negative efforts too often associated with affirmative action by the numbers.

We have also in the past year, because of a court suit, had to move into noncompetitive appointment authorities for entry professional administrative positions in the Government. We have required in these major entry occupation areas that agencies must observe the principle of veteran preference as far as administratively feasible. The term "administratively feasible" has had long use, but also during some periods has not been very effectively followed through, so we are issuing a new personnel manual letter to clarify and strengthen this provision so it is very clear that agencies have to take veterans preference into account in filling these as well as other noncompetitive appointments.

We have also taken actions to assure that spouses and mothers who are entitled to veterans preference because of the disability of their veteran relative receive the legal privilege in a more timely fashion. We have revised our standard form 15 to make it easier to identify these and other preference eligibles.

We are increasing our training programs to make agencies more aware of these programs and others. We have begun a pilot program of outreach with private veterans organizations and the Employment Development Department of the State of California, which we are going to assess and determine whether we can do that with more State governments.

Finally, I would just like to mention reduction-in-force regulations that we have recently issued. This administration believes very strongly that the current reduction-in-force procedures must be changed. We think it has been very clear, as we have reviewed the actions of the agencies, as we have received criticism from the public and the Congress, from veterans organizations, from unions and others, that we simply cannot afford the irrationalities of the present system which do not weigh performance enough in the process and allows through a bizarre "bump and retreat" process a tremendous amount of disruption in agency activities. We don't be-

lieve we can afford any longer to lose our best performers every time there is a cutback, nor should we experience unnecessary and costly disruptions in the workforce.

The Veterans Preference Act enumerates four factors in determining which employees are to be retained. In terms of the highest order of their importance, as under present regulations, they are tenure, veteran preference, length of service, and performance. The Veterans Preference Act requires that these four measures are used in a separation, but it doesn't require in which order they are to be used.

In 1978 the Congress passed the Civil Service Reform Act. The new merit system principle No. 6 enumerated in that act said that "employees should be retained on the basis of the adequacy of their performance."

In order to meet this requirement of the law, we have moved to give more weight to performance in the measure of retention in the Government. Our proposals would keep tenure first, as it is at present, keep veterans preference second, as it is at present, but to switch the order of performance and seniority and put performance ahead of seniority. Veterans preference would continue to be considered second only behind tenure, as it is today. We will make changes in terms of giving performance more weight, but any changes will be consistent with our commitment to veterans and the Veterans Preference Act.

In my view, there is no group in the country to whom we owe more than those who were willing to risk their lives for their country. I intend to see that, not only disabled veterans, but all veterans with preference, receive the priority treatment guaranteed them by law. These priorities are enthusiastically endorsed by Reagan administration policy. We believe that is not just rhetoric but is backed by the actual success of our efforts over the past 2 years.

I look forward to working with this committee and this subcommittee in our efforts to continue to improve services to American veterans, especially in veterans employment in the Government, which is my responsibility.

I appreciate the chance to testify before you this morning, and I would be very happy to answer any questions you may have.

[The statement of Dr. Devine appears at p. 50.]

Mr. LEATH. Thank you, Dr. Devine.

Veterans have indicated that the most troubling aspect of your proposed revision of reduction-in-force procedures is the reduction of bumping rights. How does this curtailment of bumping rights—which permits the separation of veterans preference employees while nonpreference employees in lower grades are retained—how does this square with the assertion that your objective in proposing these revisions is to preserve for veterans their preference in determining retention standing as is currently allowed in the RIF process?

Dr. DEVINE. Bumping and retreat, as I mentioned, is carried to very great extremes under the present procedures we have. In my own organization, the Office of Personnel Management, we had a $50,000 executive bumped down to a mail room clerk. At the Department of Health and Human Services we had a chief of a com-

puter services department who was bumped down to be an animal trainer, who had to clean out cages.

That kind of irrationality gives the Federal work force a bad name. It is grist for the media to try to cast aspersions on the rationality of our personnel procedures. I don't think we can justify having bump and retreat going down 15 steps, or a 15 grade system, which is what we have now.

Our proposals would limit bump and retreat to one bump or one retreat, to go down either one grade or in two grade series down two grades, so we are not eliminating bump and retreat but we are limiting it to one bump or one retreat to go down one grade or two grades in the appropriate series. So we are not eliminating it.

However, the critical factor is veterans preference. If it is applied in the original retention standing, without any bump and retreat, it gives the maximum protection to veterans because it gives them the absolute benefits of their veterans preference standing. You get in a different subgroup, higher than the nonpreference eligibles, and of course the disabled are even higher than that, and every nonveteran is separated before every veteran who has a successful rating. So there is full protection of veterans in the first round by itself because the order of retention doesn't allow any nonveteran to be retained when a veteran is above him in the retention standings. So even if there was no bump and retreat, there would be full weight given to veterans in the affected RIF area.

Again, we will have one bump or one retreat, down one grade level. I just don't think it makes any sense and it doesn't give veterans any more preference by having more levels of retreat. All it does is create these very indefensible cases of people bumping many, many grades down, going into positions which they passed a long time ago. It really doesn't do them any good. And because of retained-grade individuals retain their grade for 2 years, after which they are entitled to indefinite pay retention. This is just indefensible procedure. So I don't think we can justify that and I don't think it weakens veterans preference.

Mr. LEATH. I have some other questions that if we have the time I will ask. Otherwise, I will submit them for the record.[1] But in the interest of my colleagues here, I would like to recognize them first.

Mr. Evans.

Mr. EVANS. Dr. Devine, in testimony presented by the DAV today, you receive pretty high marks in the area of veterans preference. However, they state that they feel the affirmative action requirement to employ disabled Vietnam era veterans in advance is really a sham in terms of the contractors compliance. They say that they have sufficient evidence to show that the contractors do not comply with the affirmative action requirements of section 2012, title 38, United States Code.

Would you care to comment?

Dr. DEVINE. The contract employees?

Mr. EVANS. The employers are not living up to their affirmative action requirements under the law and, in effect, the affirmative action requirement is a sham.

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[1] See p. 60.

Dr. DEVINE. Well contracting out is a very complex area. For example, I don't have any direct responsibility for contracting out. I have no authority over contract employees. I only have over competitive service and noncompetitive appointments in the regular service. So once a function is contracted out, it gets into a different relationship.

It is correct that they still have veterans preference obligations when they take over Federal functions. I don't disagree with the DAV, that it is probably not followed as much as it should be. In fact, the whole affirmative action area—"shambles" may be too strong a term, but there are problems within the Government in the affirmative action area also, and that is why this committee gave the authority for that program back from EEOC to us. We have just begun to take that program over and I think it needs a lot of work.

Mr. EVANS. Your office is responsible for enforcing affirmative action? I am new to the committee and am not familiar as to who is the enforcing agency in regards to the affirmative action requirements.

Dr. DEVINE. Affirmative action for disabled veterans, yes, we are. The Civil Service Commission used to be responsible. Then, when they divided the Civil Service Commission up into OPM and the Merit Systems Protection Board, at least arguably the change in the law transferred that function to EEOC. This committee then argued that it didn't. There was some question as to whether it was. They changed the wording to make it clear it was our responsibility. So we have——

Mr. EVANS. So you have the responsibility, even if these jobs are contracted out, to insure that there is affirmative action compliance.

Dr. DEVINE. As I say, once they are gone, then the relationship becomes tenuous.

Mr. EVANS. Once they are contracted out, the relationship becomes tenuous?

Dr. DEVINE. Yes.

Mr. EVANS. Don't you have any kind of review mechanism to make sure that those employers continue to engage in affirmative action practices for disabled veterans and Vietnam-era veterans? Doesn't the Federal Government have a responsibility to oversee that?

Dr. DEVINE. In terms of selection of individuals, which I am sure is the DAV's main concern, that is ours, because that is the transition between us and the private sector. As I say, this whole area has not been very well done. We have just recently taken authority over it and it is going to take us some time to make those changes.

Mr. EVANS. So you are in the process of making those changes—or do you have changes in mind that you could suggest and give us today for our information?

Dr. DEVINE. We believe our first obligation is to straighten out what is clearly and directly our responsibility, which is the affirmative action within the Government. As I say, that is the major problem as we see it. That isn't being done and that is clearly our responsibility. That is what we have to work on.

First, once the function gets into the private sector, then it is the Office of Federal Compliance in the Department of Labor that is responsible for affirmative action. But there is this transition and that is an area of our responsibility. We will look into it to make sure that in that transition the rights of Federal employees are considered.

But again, I don't consider that our first obligation. Our first obligation is to make sure it works in my main area of responsibility, which is within the Government.

Mr. EVANS. In an area that we're getting more and more involved in, specifically contracting out, why isn't it a responsibility worthy of your immediate concern?

Dr. DEVINE. Well, there are a lot more people involved within the competitive service than there are contracting out. It is true that we're doing more, but the level of magnitude of the two is very different.

Again, this is mainly an OFPP problem, not ours——

Mr. EVANS. It is a problem for this committee and I would like to have an ongoing dialog with you regarding the problem. I would also like this committee, if possible, to continue oversight in that regard.

We have strong testimony here from the DAV which implies that veterans preference is effectively being cut into by contracting out. This implication was also included in the testimony of AMVETS. Therefore, veterans preference seems to be of great concern to the major veterans organizations as well as members of this committee. So we would like to have your help.

I would ask the chairman if we could continue a review of this subject. I would appreciate his cooperation.

Thank you.

Mr. LEATH. I think that is an excellent point. And I think Dr. Devine probably agrees with you, that there is a grey area there that needs to be explored.

Mr. Edgar?

Mr. EDGAR. Thank you, Mr. Chairman.

Dr. Devine, welcome to our committee this morning. I am sorry I wasn't here at the beginning of your testimony. I do have several questions I would like to ask.

I would like to ask a followup question to our earlier hearing several years ago when I was chair of this particular subcommittee. During the 97th Congress this subcommittee spent a great deal of time investigating the record of the Postal Service in its hiring of veterans, particularly in its hiring of disabled veterans. Let me just ask this question.

In a letter addressed to Ron Drach, the national employment director of the DAV, dated July 14, 1981,[1] you stated—and let me quote and comment and then I will place the whole letter in the record: "The Office of Personnel Management is currently considering conducting on-site audits in order to insure that the Postal Service is in compliance with all veterans preference regulations."

Are you familiar with that letter?

Dr. DEVINE. Yes, sir.

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[1] See p. 65.

Mr. EDGAR. Were these audits ever conducted?

Dr. DEVINE. We have not been conducting audits in the formal sense. Rather, we have been meeting almost continually since that time on the passover of severely disabled veterans. I do not have an up-to-date status report, but I know we have made progress.

Mr. EDGAR. Could you for the record provide the status of that particular audit and also what plans you have as a result of that status report?

Dr. DEVINE. Yes, sir, we would be glad to.

[The following was subsequently submitted for the record:]

OPM REPORT ON CONSIDERATION OF CPS PREFERENCE ELIGIBLE APPLICANTS FOR POSTAL SERVICE JOBS

BACKGROUND

The Postal Reorganization Act of 1970 effectively eliminated OPM involvement in most aspects of postal employment procedures and policies. As a part of the proposals in the Civil Service Reform Act of 1978 to strengthen programs for disabled veterans, a provision was enacted which gives OPM authority (which cannot be delegated) to make a final determination about a 30 percent or more disabled veteran's physical ability to do a job in the Federal Government. We already had procedures in place for reviewing disqualifications of veterans on the basis of medical conditions, so this provision did not substantially alter the general role of OPM in reviewing veteran passovers. However, the provision in CSRA explicitly did not exclude Postal Service from its coverage, and so had the effect of creating a new, although relatively narrow, authority for OPM oversight of Postal Service employment practices.

Because of the ambiguity in the establishment of Postal Service coverage (the law failed to exclude Postal Service, rather than explicitly including it), it took some time for OPM and Postal Service to agree that the review authority in fact existed and that OPM responsibility to review disqualifications applied to any disqualification of a 30 percent or more disabled veteran which took place after January 11, 1979 (the effective date of CSRA). Thereafter, we worked closely with the Postal Service to determine the details of how these cases would be handled. We and the Postal Service now have a clear understanding of the procedures which Postal Service will follow in making their determinations about disqualifications and documenting them for our review, and OPM's procedures for making final determinations about qualifications.

After reaching agreement with the Postal Service on procedures, we found that many cases did not contain adequate and/or current information. To assure proper treatment of all cases, (some of which had been pending for quite some time), the Postal Service agreed to contact each applicant to determine current interest in employment and to provide the opportunity for the submission of additional and/or current medical information. The Postal Service agreed to take a fresh look at each case.

It took several months for Postal Service to request, receive and assess the information necessary to reconsider the qualifications of the disabled veterans who had previously been disqualified. In conducting the review, Postal Service discovered that some applicants could no longer be located. Those cases are continuing to be held in Postal Service regional offices, with the understanding that, if an applicant makes an inquiry and thus reestablishes contact, his/her eligibility will be reinstated and he/she will be offered further opportunity to provide medical information relevant to determining qualifications for the job.

Of the applicants who were reached in the reassessment process, some had already obtained other employment and were no longer interested in a Postal Service job, and a significant number of others were already employed by the Postal Service itself in other positions. (We view this finding with particular interest, since it is an important indicator of the overall effectiveness of Postal Service's commitment to hire disabled veterans.)

CURRENT STATUS OF CASE PROCESSING

We have now begun to receive the applications and other supporting documentation from those disabled veterans which Postal Service has determined, after this

further review, are not physically qualified for Postal Service positions. It is clear from these records that most of the cases are now properly evaluated and documented by Postal Service. Where we have identified further continuing problem areas in processing or documentation, we have brought those matters to Postal Service's attention, and they have moved promptly to address the issues with their field staffs. We will continue to monitor these cases closely, but we are encouraged by the progress to date and we believe that our continuing close communication with Postal Service will avoid further problems in this important area of veterans employment.

Mr. EDGAR. That would be very helpful.

On page 2 of your statement today you indicate that:

The Reagan administration is committed to veterans opportunities in the Federal Government. We live up to the spirit and letter of the Veterans' Preference Act.

That's on the top of page 2.

If that is so, can you tell me why the Reagan administration would completely undermine the intent and spirit of a veterans preference statute, section 3310 of title 5, U.S. Code, which gives veterans absolute preference for certain Federal jobs by recommending that those jobs themselves be eliminated? Isn't it a conflict of the spirit and the letter of that veterans preference statute to, on the one hand, support the law and on the other hand contract out those specific jobs which were specifically designated as preferential jobs for veterans?

Dr. DEVINE. I think there are, of course, many purposes in the law, and I think one of the things that the executive branch is required to do is to use the resources of the taxpayers in the most efficient way possible. There is a policy in this administration, as there was in the past administration, of contracting out services for which the private sector can perform those services with lower costs and can give the same level of services. There is a requirement through OMB Circular A-76 to do a competitive evaluation between the private and public sector, and if the private sector can do the job at the same level of service, with a 10 percent advantage to the public sector, if they can go beyond that 10 percent, then we believe, as the past administration did, that that should be contracted out.

Mr. EDGAR. But isn't——

Dr. DEVINE. Now, it is true that in some of these areas, mainly protective services, that the Veterans' Preference Act specifically looks at, that these have in cost comparisons tended to show the private sector more efficient in providing these services. That is what Congressman Evans I am sure——

Mr. EDGAR. I think the question I am asking is yes or no.

Dr. DEVINE. No, I don't think that it is inconsistent. There are many purposes and——

Mr. EDGAR. But aren't these protective jobs specifically set aside for veterans?

Dr. DEVINE. Yes, sir, and I think that is why the DAV and the others are properly concerned, that veterans preference be applied when these positions are transferred to the private sector. The chairman was correct, that I agree with Congressman Evans, that this is something that we have to assure—This is something that I am sure the General Services Administration, as they are going through this, is concerned with. But I will be happy to be in touch with them to make sure that they give all weight to veterans pref-

erence when they are contracted out, as well as the Office of Federal Contract Compliance.

Mr. EDGAR. I offered an amendment on the House floor which prevented that action for this particular fiscal year. There were conflicting numbers given to me by different agencies of the Federal Government as to how many people were involved in the decision on these specific jobs that we are talking about. They ranged high and low, all over the field, as to how many jobs, in fact, would have been contracted out had that amendment not been offered.

Do you have specific numbers, first as to how many jobs would have been contracted out under the provisions of A–76 as it related to this particular issue, and also how many of those jobs were, in fact, jobs held by veterans?

Dr. DEVINE. No, sir. A–76 is under the authority of the Office of Management and Budget, not the Office of Personnel Management, so I don't have any of those figures. The only ones I would suspect would be either OMB or the individual agencies involved. I would be happy to try and see if we could get them together. But we don't have such figures.

Mr. EDGAR. Well, there is some testimony that we will hear later that indicates GSA has informed, at least the Disabled American Veterans, that there are 3,490 jobs that fall under section 3310 within just the agency of GSA, and of those, 2,023, almost 60 percent, were held by preference eligibles. We are trying to get a handle on not just that figure but all of the specifics under the Federal employment related to that.

Within the preference eligible categories, the DAV found 96 veterans with 30 percent or more disability; they found 260 that are disabled veterans with less than 30 percent disability, and they go on to talk about how many are Vietnam era veterans. It is important, as we look at the value of contracting out, versus the value of giving jobs at the bottom end of the civil service scale to those who may not have had the opportunity to be recycled back into our society, their value both ways. The question of whether or not those veterans are going to be cared for by the private sector in the same way in which the Federal Government had intended they be cared for by this preferential statute I think really is something we ought to review.

Because the Federal Government, in many instances, may have a responsibility to these veterans even if they lose their positions—unemployment compensation, welfare benefits and other benefits that we provide. I am not sure that anyone has done a real clear study, particularly at the lowest end of the hiring scale, not the middle level or upper level, but the bottom level, what the ripple effect of that decision might be.

Let me ask you just a couple other very quick questions. The next question will probably have to be provided for the record.

Under section 3312(b) of title 5, U.S. Code, agencies of the Federal Government are prohibited from denying employment to certain veterans purely for medical reasons. Can you tell me how many requests by agencies have been made to pass over veterans whose medical conditions were considered too severe by the agency for employment? We are also interested in how many of those rulings

were sustained, how many were overruled, and what was the average time required to make the ruling on such actions?

Would you supply that information for the record?

Dr. DEVINE. Yes, I would be happy to.

[The information follows:]

For the period January–March 1983:

	Cases received	Cases sustained	Percent	Cases not sustained	Percent
All disqualifications	203	190	94	13	6
All passovers	114	109	96	5	4
CP–S passovers [1]	56	51	91	5	9

[1] 30 percent or more disabled veterans specifically covered by 5 U.S.C. 3312(b).

Average processing time for this period was 4–5 weeks. Some delays were introduced because we were clearing out a backlog of old cases; that effort is now completed, and current processing of incoming cases is completed in 2 weeks or less, for cases other than Postal Service. because of the numbers of cases being received from Postal Service (they are clearing out their backlog of CP–S cases), processing is still averaging 4 weeks on postal cases.

Mr. EDGAR. Do you have any information on that issue today?

Dr. DEVINE. No, I don't. I know I saw those figures a couple of months ago. I know we have them and I will be happy to supply them.

Mr. EDGAR. Can you tell me how the Office of Personnel Management reviews the agency activity to insure that they are in compliance with this section?

Dr. DEVINE. Yes. We have a regular pass-over procedure in which we evaluate all cases in which questions are raised as to passover, and through our regular agency compliance and evaluation audits we also sample them as we go through agency audits.

Mr. EDGAR. What reports do you specifically require the agencies to provide to you, and what officials are designated to provide oversight on this?

Dr. DEVINE. The major officials are the Associate Director for Staffing at the Office of Personnel Management, and the Associate Director for Compliance and Investigation.

Mr. EDGAR. Just one final question.

You have been in your position for a little over 2 years at this point. You have had a lot of public attention on some of the decisions that you have made. A number of them have been controversial. There are a number of us in the room who happen to get paid by the Federal Government and have contributed to some of the decisions that you have made in a number of areas, particularly the health care area. You have had a chance to look at the whole question of veterans preference and veterans employment, veterans eligibility for these programs.

Are there any specific recommendations that you would make this morning in which we could improve, through the Office of Personnel Management, the ability to have in the Federal service quality and qualified persons who may also have served their country in a time of conflict or in a time of peace, who have veterans preference and veterans eligibility? Are there any changes, any im-

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provements, any recommendations that you would make given the 2-year experience that you have?

Dr. DEVINE. It is my opinion that Congress has given OPM the tools that are necessary to make veterans preference work. I believe, without casting any aspersions on anyone, that for a period these tools were not used, that the right kind of signals weren't being sent out through the Government and its agencies.

I think we have changed that situation. We have not solved all the problems. As I mentioned, we have just taken over the affirmative action responsibility for disabled veterans. We are not going to be able to turn that program around overnight; it is going to take effort and commitment on our part. We are committed to giving that effort and commitment.

I think the Congress has given the appropriate tools. The question is our using them, and that is why this committee, in exercising oversight, is the appropriate forum. I think that under your careful review and my administration, together we can make the system work the way it is supposed to.

Mr. EDGAR. Thank you.

Mr. Chairman, I would like to ask unanimous consent to include in the record of this hearing the July 14, 1981 letter that I made reference to in the questioning.

Mr. LEATH. Without objection.

[The letter appears at p. 65.]

Mr. LEATH. Mr. Wilson, do you have a question?

Mr. WILSON. Dr. Devine, some concern has been expressed that special considerations would sometimes need to be given to disabled veterans with respect to performance ratings, such things as hospitalization, for instance.

Would you care to comment on that?

Dr. DEVINE. I'm sorry, on hospitalization? What was your question?

Mr. WILSON. I think in the testimony of one of the veterans organizations they said that when performance ratings are made, that special consideration might not be given to such things as hospitalization required by service-connected veterans.

Dr. DEVINE. I must frankly say I haven't had that issue raised. I would like the opportunity to look into it. This is the first I have heard of that concern. As I mentioned, we meet regularly with veterans organizations and I will certainly look into that.

Again, as I say, I don't know of any problem with that.

Mr. WILSON. Would you care to comment further about the California pilot program that you have had, its success, and what you plan to do with it in the future?

Dr. DEVINE. Yes, sir. The California program, we were very happy to get involved to try to merge the resources of the State governments, and especially their outreach programs, into veterans employment.

I am not sure of the future of that. We want to carefully assess how it worked and the kind of resources that we have available. But from what I have seen so far, it looks very promising. Once we assess it fully, we will be able to decide whether we should go further on it.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. LEATH. Thank you.

One further question, Dr. Devine. While we agree that performance should be an important factor in the retention of employees during a RIF, you intend to credit performance based on the ratings of the new performance appraisal system mandated by the Civil Service Reform Act of 1978. This system, which was launched on October 1, 1981, has been frequently criticized. The experience in the private sector seems to demonstrate that it takes several years to develop and refine an adequate performance appraisal system.

Do you believe that the Federal performance appraisal system is sufficiently developed at this point to justify assigning greater weight to performance than we would to total military and civilian service of Federal employees when we are attempting to determine their retention standing?

Dr. DEVINE. Yes, sir; I do. I think a couple of factors are relevant there.

No. 1, the private sector will also say that they never think that a performance appraisal system is perfect, that it always needs improvement. I won't argue that our performance appraisal system is perfect. We put our resources before the October 1981 deadline into getting the system in place and coming up with the initial system. Since then we have been and the agencies have continually been going back and evaluating those systems, to upgrade them. We will have 2 years experience under that program, when I think our changes would go through. I think 2 years is normal practice in the private sector to give major consequences to the system.

Finally, there is a reciprocal factor about performance appraisal systems that I think is very important. The systems tend to not be used seriously if they don't have serious consequences flowing from them. One of the real problems that we have—and we did have a performance appraisal system before October 1981—the problem with it was over 98 percent of the people got the same rating. What happened under that system, it became an academic paper exercise in which the supervisors sat down once a year and checked everybody off as satisfactory. That was because there were no consequences that flowed from that performance rating. Academic studies will show that if there aren't consequences from the system, nobody takes it seriously. So part of the upgrading of the performance appraisal process itself is to give consequences, such as better pay for better performance. If the consequences are integrated into the appraisal system, that gives it vitality and helps upgrade it itself.

Mr. LEATH. Thank you, Dr. Devine. We appreciate your testimony. I have a couple of other questions that I will submit to you for the record.

Dr. DEVINE. Thank you very much, Mr. Chairman. It is always a pleasure to be here with you.

Mr. LEATH. Our next witness will be Ron Drach, the national employment director of the DAV. Welcome, Ron. I think you have been before this committee and the various subcommittees enough to know what we would desire you to do. So if you will just proceed.

STATEMENT OF RONALD W. DRACH, NATIONAL EMPLOYMENT DIRECTOR, DISABLED AMERICAN VETERANS

Mr. DRACH. Thank you very much, Mr. Chairman.

First of all I would like to thank you for having these hearings today and thank some other people for all the help they have given me over the last couple of weeks and making my job a lot easier. Two weeks ago "Butch" Joeckel appeared on my behalf before this subcommittee and today Mr. Evans and Mr. Edgar gave two-thirds of my testimony. Thank you very much.

Mr. LEATH. As I remember, you were "roughing it" somewhere out on a safari in the sky country or something.

Mr. DRACH. Truckee, Calif. It is rather desolate out there.

Mr. LEATH. Well, we did pray for you while you were gone. [Laughter.]

Mr. DRACH. Thank you very much. It didn't work.

At the outset, too, Mr. Chairman, I would like to say in very general terms that this administration, and particularly Dr. Devine, has been very open with the DAV and very honest with us on some of these issues that have been discussed today. We are not always in total agreement, obviously, with him or with the administration, but at least for the most part he has been up front.

The issue of the RIF's, which I will discuss in a little bit more detail in a few minutes, that issue was raised to the Office of Personnel Management back in May 1981, when the whole issue of a task force being established to study this issue came up. We have been assured consistently since then that veterans preference would not be changed in the RIF. The most recent assurance to me personally was given by Dr. Devine to me verbally. That does not mean to say we are going to sit back and just let the regulations go in. We are certainly going to be looking at them, analyzing them, and preparing comments to OPM within that process, with hopes of getting significant changes made in areas where we think they need to be made.

Before I get into that in a little bit more detail, I would like to talk briefly about contracting out. As was indicated earlier, section 3310, which has been in the law for almost 40 years now, was a relatively small token, I think, of the Nation's gratitude to the returning World War II veteran when they put that provision into the Veterans Preference Act of 1944. As we know, in 1966 the Veterans Preference Act was codified in title 5, United States Code. Most recently in 1978, when the previous administration attempted to modify veterans preference, it kind of backfired, and instead of getting weaker it really became stronger as a result of a lot of efforts of a lot of people.

I do believe there is a conflict here in terms of legislative intent and administrative edict. As we know, A–76 is an administrative edict. It is not statutorily provided for. It would appear, at least on the surface, that A–76 amends section 3310 by, for all intents and purposes, taking it out of title 5, United State Code. We think that is wrong.

I was happy to hear Mr. Evans bring up the issue and hear Dr. Devine comment on the problem associated with those jobs that are contracted out. The reference in my prepared text regarding af-

firmative action was in the context of the private sector and OFCCP's lack of emphasis or lack of concern in our opinion to enforce the provisions of title 38 in that respect. I certainly am hopeful that this subcommittee will pursue that matter. I think we need to ask some hard questions of Ellen Shong, the Director of OFCCP. But I was happy to hear Dr. Devine say that he would be willing to look into that transition area.

One of the things that I think is probably overlooked in the process of contracting out is the fact that these contractors are required to have an affirmative action clause in their contract. In many cases, we believe that the contractor may not be totally at fault. The agency that is doing the contracting may not have that clause in their contract or may not emphasize to that contractor the affirmative action obligations. I do believe that OPM does need to take an active role in assuring at a minimum that these agencies, when contracting out, provide emphasis that the contractor must take affirmative action.

But that whole issue may be not too worthy of discussion when you look at—there is one example, at least, that was brought to our attention regarding an offer given to a displaced employee. The contractor in this particular case offered the person, No. 1, only a 20-hour workweek, and that was all that the individual was going to be given. In addition, only $5.59 an hour. In addition to that, and perhaps the most devastating to an individual, is the fact that the employer was going to pay 32 cents an hour in actual monetary benefits—not in benefits but in actual money—32 cents an hour for that person to go out and buy fringe benefits; 32 cents an hour is not going to buy adequate health and medical care. Again, many of these veterans are disabled veterans who may need medical care or doctor's care over and above what the VA is able to provide, and they also have families in many instances. Retirement, forget about it; 32 cents an hour is never going to provide for an adequate retirement program.

It is unclear whether or not the employer pays social security, though I would imagine they would have to because there is an employer-employee relationship. But, you know, when you compare in this particular case the fringe benefit package approaching 5.4 percent of the total compensation, compare that to the average 33-percent compensation fringe benefit package in the private sector, it is pretty rough. I think most people would be in a better position just to say "No thank you, I'm going to go on unemployment and collect unemployment insurance benefits," which in many cases—for example, in the District, they are talking now about—I think it is around $3.55 an hour to stay home. You know, that is about 20 cents above the minimum wage.

On the issue of contracting out, we certainly appreciate the support given us on this issue by Congressman Edgar when he was chairman, by getting the amendment through. But we are weary of that because it does only prohibit GSA from contracting out and only prohibits that for 1 year. Of course, that has been addressed somewhat by your introduction, Mr. Leath, of H.R. 828 and 829, which are both bills that DAV very strongly supports.

On the issue of reductions in force, I mentioned some of our concerns earlier. Perhaps two or three areas that we want to look at

very closely—I only had a chance to read them over one time. If I had to say one thing about the RIF regulations, they are probably the most confusing regulations that I have ever read in 10 years in Washington, be they the old regulations or the proposed regulations. There are a lot of potential serious consequences that are not in writing when you start applying a reduction in force. The bumping issue, which was mentioned, it is certainly one of the issues that bothers us, even though, as Dr. Devine said, all things being equal, the veteran would still be retained.

Veterans in the last decade at least have suffered an unemployment rate significantly higher than the nonveteran counterpart, almost consistently since 1970. A lot of these veterans are Vietnam-era veterans now and they would be the ones, because of lack of tenure, to also go. Perhaps based on the type of appointment, they may also be caught up in that. So I think that is something that needs serious looking at.

The appeal process, unless I am mistaken, preference eligibles have the statutory right of appeal in an adverse action. If these regulations appear to take away the statutory appeal right, I think there is an obvious conflict there and it needs to be looked at. So we are going to be looking at the RIF regulations very, very closely and providing comments to OPM on that issue and will be glad to provide our comments to the committee at a later date.

On section 3312, which was mentioned earlier, we think again that was a very, very good provision that was added by the Civil Service Reform Act. Several questions that we have have been asked here this morning. One question, though, that was not asked—and it just came to me as Mr. Edgar was asking question—was on the issue of reviews and appeals, if you will, on how much staff has OPM allocated to that process. We will be pursuing that with Dr. Devine's Office to make sure that adequate staff is provided.

On the affirmative action regulations, DAV believed in 1978 that the Reform Act did not statutorily transfer that responsibility to EEOC. We questioned the legality of that in the past administration because we felt again that the administration was modifying Federal statutes. We are happy to see that OPM has reassumed the responsibility in section 2014 of title 38.

Late yesterday—and I haven't had a chance to pursue this and it is not in my testimony—but I had a call from one of our local national service officers who advised me that he has been informed by several Federal agencies in Washington that affirmative action for veterans is meaningless and they aren't going to worry about and aren't going to do anything about it. I am pursuing that and trying to get some more information, so that if this is, indeed, true, this emphasizes the further need for OPM to do something other than just issue regulations.

We are concerned that OPM, in their regulations, are only going to review a select group of agency plans. The law says all Federal departments and agencies shall submit an affirmative action plan annually, so we think they are neglecting the full congressional intent there.

We are pleased also in the affirmative action regulations that they are emphasizing the advancement requirement in the statute.

All too often, again we have seen instances where agencies have told disabled veterans "you're not entitled to affirmative action; you have already attained GS-10, GS-12." Again, the law does not put a grade cap on that particular action.

The other area, I was a little disappointed in Dr. Devine's answers to one of the questions this morning about who is responsible for what. At no point in time did I hear him say the Office of Veterans Employment programs had any responsibility for anything. It is a real concern to me that we have a national office over at OPM, and we have 10 regional offices, and within those offices we have people designated to work on the veterans employment programs. Well, to me they should have some role of enforcement, be it monitoring agencies, be it investigating complaints of violations of veterans preference, some distinguishable role. I am just not too sure what they do besides answer letters. I would like to see them have a more aggressive role in the whole policy area, as well as the investigatory area, of possible violations of veterans preference.

It is interesting that in at least one job description that I obtained from one of these individuals, that one of the responsibilities is to "provide consultation services in the resolution of difficult complaints or appeals, or in responding to complex inquiries involving preference and the veterans employment program or the handicapped program." Another one is "knowledge of the legal regulatory and program aspects of affirmative employment responsibilities."

Now, those two areas alone are mind boggling in terms of trying to keep abreast of all these changes. We have had numerous regulatory, statutory and policy changes in the last 5 or 6 years. Yet the individuals responsible out in the regional offices for these programs, to my knowledge, have had only one training session in the last 10 years. I am not sure how we keep these people abreast of these changes without bringing them in or bringing them somewhere together to exchange problems and discuss some of these things.

The other area that concerns me there is that in at least 3 of the 10 regions there are two individuals assigned, one to the veterans program and one to the overall affirmative action program. The other seven regions have one person wearing both hats. I think we need to get that clarified. We think there should be two people.

In closing, Mr. Chairman, I want to thank you for your indulgence here. I would like to just mention the DAV'S program out in California. I don't want to downplay OPM's role and I am not sure—I haven't read Dr. Devine's statement in total. But this program was initiated by an individual who works with the State Employment Security Agency out there, EED, in concert with the past Department Commander of the DAV. I would like to take a little bit of credit for that, too, for the DAV. Although it has been a concerted effort, there is no question about it, with the State Employment Security Agency, the DAV, the other veterans organizations and OPM. They are talking about expanding that program throughout the western region. We are looking for material to try to have that program duplicated throughout the country. We think it is a very aggressive program, a very good program. As a matter of fact, the DAV is going to recognize the three individuals in-

volved with a National Commander's certificate of appreciation for their total combined efforts in that program.

I would be happy to answer any questions.

[The statement of Mr. Drach appears on p. 67.]

Mr. LEATH. You have touched on most of the things I was going to ask you, Ron, but I think one of the most important things we have had arise out of the testimony this morning is the fact that OPM is not at this point adequately enforcing the affirmative action programs. I hope that you and the other veterans organizations will continue to stay on them about that and, of course, keep us posted as to whether or not you think they are making any progress.

I think Dr. Devine did indicate that he feels they do have an obligation in there and intimated, of course, that they aren't adequately enforcing it. I think that is something we have got to keep our eye on.

Also, you touched on the problem of appeals. Do you have any idea how long it takes for a decision to be reached regarding the veteran's ability to perform his job when he makes an appeal? How long is it taking him to——

Mr. DRACH. I don't have any definite information on that. I have met with Nancy Kingsbury, who is responsible at OPM for that process. One of the inherent problems is the fact that when the program first started there was kind of a backlog of appeals, so the initial start-up took some time. But she tells me they are working very hard to get that resolved, to get the backlog out and try to resolve these cases in a minimum amount of time.

The other thing consistent with that, Mr. Chairman, is our concern about the requirement that the agencies keep the job open pending this appeal process. We haven't seen any evidence yet, but we are certainly going to be looking very closely to make sure that these individuals, if OPM rules in favor of the disabled veteran, that the agency hires them. There is a question as to the effective date of being hired, also. Our opinion is that the congressional intent was that if I was denied employment on April 7 for reasons that are not sustained by OPM, then I should have been hired April 7. What appears to be happening is that once OPM overrules the agency, the agency is giving them a job which is maybe as much as 90 days down the road. So you lose 3 months of work.

Mr. LEATH. Maybe OPM ought to consider contracting out that appeals process to DAV.

Mr. Edgar?

Mr. EDGAR. Thank you, Mr. Chairman.

I have been busy up here doing my homework on some other issues because I feel pretty secure that Ron Drach is in charge of DAV's responsibility in overseeing the whole question of education, training, employment, and veterans preference. In the 2 years that I was chairman of this particular subcommittee, I don't know of anyone who worked as hard as you did in trying to corner me and educate me as to some of these issues. I would just like to congratulate you for that effort and wish you well in the process of the next year.

I am not sure, given the pressures of budgets and some of the things that we read about in the newspaper in relationship to OPM

and its actions that we can rest on the regulations or on the procedures that we see them pursuing, in the whole area of making sure there is compliance with these programs. I hope that we can all work together to try and make sure that we keep all eyes on that agency and their responsibility. I am just nervous that this is an area that can be overlooked and we can find ourselves a year from now sitting here and asking questions about what has happened with the progress that we thought was being made in these areas.

Let me just thank you for your testimony.

Mr. DRACH. Thank you, Mr. Edgar.

Mr. LEATH. Thank you, Ron. I sure second that. We appreciate it.

Our next witness is Paul Egan, deputy director of the national legislative commission, the American Legion.

You may proceed, Paul.

STATEMENT OF PAUL S. EGAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION

Mr. EGAN. Thank you, Mr. Chairman. We appreciate the opportunity to be here this morning.

Like the other organizations that you have heard from this morning, the American Legion, too, has enjoyed an excellent relationship with the Office of Personnel Management—in fact, using their own performance criteria, we might have to say that our relationship with OPM has been outstanding.

Given the length of our statement, I think it is appropriate to confine the oral summary to two issues. The most pressing at the present time seems to be the regulations that were issued on the 30th of March. We still haven't taken the opportunity to thoroughly review these regulations, as they are very complex. However, as soon as we do, we will certainly make our findings available to this committee.

Unfortunately, we come to this committee this morning with more questions than with answers concerning these regulations, particularly with regard to the riffing process. Naturally, the first question we are concerned about is, Will veterans retention rights be protected? Now, as you might imagine, and I am sure all the organizations have also had their telephones ringing off the hook this last week, were no exception. I received a call early in the week from someone I regarded as somewhat of a disgruntled Federal employee who said he had spoken to someone in the General Counsel's Office of OPM. He gave me the name of that person and I tried to contact him. That person had given this caller the impression that one of the purposes of these RIF regulations was to emasculate veterans preferrence.

Well, I tried to get in touch with the person in the General Counsel's Office. I got no response but did get a call back from someone else. I explained who I was and what we were up to and that this hearing was going on today and asked point blank whether or not these regulations were intended to emasculate veterans preference. The person was unable to give an answer except to say "I don't know." Naturally, we are somewhat suspicious when we talk to someone in OPM, particularly in the General Counsel's Office, and receive that kind of response.

Another question which comes to mind is, Will added attention to performance erode the current retention order of tenure in veterans preference? Now, it is pretty hard to argue with the concept of performance. Certainly superior performance ought to be rewarded and those people ought to stay on the job. However, if performance, in something as subjective as Federal employment, is going to be the principal measure of whether or not someone is going to be retained, we feel there certainly ought to be some attempt to make some objective measure of performance and that that might well be applied governmentwide before we go headlong into a system without having any ground rules to begin with.

Another question which is very important to us is, Will veterans be protected from instability in their jobs, particularly protected from patronage within the Federal service? I had another telephone call where an example was cited to me, in which a relatively new Assistant Secretary of an agency called his management people together and instructed them, with the expectation that another RIF would be coming up this August, that no outstanding performance ratings were to be given. That Assistant Secretary was then said to have issued outstanding ratings of performance for his favorite people.

Now, while that doesn't directly affect veterans, it certainly could have an effect on veterans if their ratings were deliberately held down to a certain specified rating. All of these are anecdotes and I have absolutely no evidence to prove them, but these are the kinds of calls we are getting and the kinds of questions that concern us.

We are aware of a pilot project that was started in 1980 which utilized the same system for riffing, which placed performance above tenure and preference, and that project was scheduled to run until 1985. We think it is appropriate also, before going headlong into the present proposal, to have some results and an opportunity to analyze the findings of that demonstration project first.

The other subject that we would like to talk about concerns contracting out under section 3310 of title 5. Like the DAV, we will fully support the legislation, Mr. Chairman, that you have introduced, H.R. 828 and 829. We are under the impression that that legislation has now been referred to the Human Resources Subcommittee of Post Office and Civil Service, and preliminary indications are that Mr. Albosta will be looking seriously at that legislation.

We believe that as part of the original Veterans Preference Act of 1944, those jobs of messengers, elevator operators, security guards, indeed, should be protected. If those jobs were eliminated, these employees would likely not be able to transfer to other jobs within the Federal Government and would therefore find themselves in the street. I don't think the jobs we are talking about constitute a great expense to the Federal Government; the jobs are not very high paying. Certainly, if those jobs were contracted out, we can be sure that they would not make nearly what they are making today.

That concludes my statement.

[The statement of Mr. Egan appears at p. 82.]

Mr. LEATH. Certainly we share the same concerns that you do and we will be looking for answers to the same questions that you posed.

I do have some questions to ask you to respond to for the record,[1] but due to the fact that I have got another meeting at about 11 o'clock, I would like to do that, as opposed to asking them of you at this point.

Mr. Edgar.

Mr. EDGAR. I am about to leave, too, and go introduce a veterans bill on the House floor dealing with reinstating burial benefits for prisoners of war and recipients of the Purple Heart, and others that were excluded in action that this committee has taken.

I would just like to say I appreciate your testimony and your interest in the issue. I think all veterans organizations have to be vigilant on this issue. You have shared some anecdotes that make me a bit nervous.

Mr. EGAN. And well they should.

I might add, Mr. Chairman, that the director of our economics division is not able to be here this morning. He has chosen this week to go on his "safari" in Florida.

Mr. EDGAR. All the veterans are going to Florida.

Mr. EGAN. It seems so. Maybe we should advise Mr. Mica of that.

Mr. EDGAR. Thank you very much for your testimony.

Mr. LEATH. Thank you, Paul.

Our final witness will be Don Schwab, director of the National Legislative Service of the VFW. Welcome, Don.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. SCHWAB. Thank you, Mr. Chairman.

When you are the last witness, it is difficult not to be redundant. I will try not to be any more so than necessary.

Mr. LEATH. Having been a junior member around here for a while, I somewhat understand that.

Mr. SCHWAB. Thank you for the privilege of appearing before this subcommittee, Mr. Chairman.

As you know, veterans preference of one form or another has been the law of the land for 118 years, and preference in retention in reduction in force for veterans has been the law of the land in one form or another for nearly 107 years.

The primary thrust of the testimony this morning has been, of course, the proposed rewriting of reduction-in-force regulations by the Office of Personnel Management. This first surfaced early last January, and as some of the preceeding witnesses, we had numerous phone calls from people who would identify themselves, those who wouldn't, some who said they were working very closely with the rewrite, and that the intent is, in fact, to emasculate veterans preference. We have had those who said that it is a very sophisticated, Fifth Avenue type of approach, to reducing veterans preference.

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[1] See p. 103.

Our personnel specialist, employment specialist, unfortunately couldn't be here this morning. He is out ill. He told me time and time again that the present Director of OPM has been up front with the veterans organizations and he has done a good job. I have the philosophy that if it isn't broken, don't fix it. I wondered what is the purpose of rewriting the retention regulations. We have been assured in writing, in face-to-face meetings with the Director of the Office of Personnel Management, that it would not affect veterans preference. That statement is made in the Federal Register of April 30. Nevertheless, why rewrite the regs?

Now, a press release was issued by the Office of Personnel Management that it would help women and minorities. Here now we go back to the proposed civil service reform laws, and the same hue and cry was brought up, that veterans preference was detrimental to women and minorities. We in the VFW are concerned about veterans, women veterans, minority veterans, and it was brought out at that time that women at no time met their enlistment quotas either during World War II, Korea, or Vietnam. They were authorized 2 percent of the strength of the Armed Forces. They never made those quotas. As far as minorities, the black veterans organization at that time testified fully in support of veterans preference. Nobody can say that black minorities haven't served and benefited by veterans preference.

With respect to the rewrite of the regulations, Mr. Chairman, we are particularly concerned with the bumping and retreating provisions. We understand the rationale. We have repeated earlier they don't want GS–15's bumping down to GS–5 levels. That is all well and good. But we think the provision is much too stringent and it is going to put men and women out of jobs who are getting along in years but not old enough to retire. They are going to be put out on the job market during a time of high unemployment.

We are also not happy with evaluating only on the present efficiency rating, the performance rating. It is particularly disadvantageous to disabled veterans who may have an exacerbation of their physical disability, maybe even requiring hospitalization, which might tend to give them a lower performance rating than had they been on the job. Also, there is a possibility, which exists even today, that if you have a change in reporting official, he may rate differently. The veteran may do the same job he did under the prior official but got a lesser or a better rating.

Then we have the appeal. To go to the Merit Systems Protection Board, under these regulations, the former employee has to be on the street unemployed 30 days before he can appeal to the Merit Systems Protection Board. He has no right to a personal appearance, no right to counsel, and the Board will consider the case on the record, meaning, I guess, the last proficiency report. This is what got the man or woman fired in the first instance.

We are digging deeper into these regulations. As was brought out, they are very confusing, very subtle, and we will submit our written report on those before the time tolls and will furnish this subcommittee a copy if they would like to have it.

The jobs reserved for veterans under title 5, United States Code, section 3310, of course, we have different figures. One of the labor unions gave us 13,000 jobs that would be involved, of which 9,000

were held by veterans and disabled veterans. We were delighted when Mr. Edgar was successful finally in getting through an amendment to the continuing resolution to bar GSA from contracting out those jobs for the balance of this fiscal year. We are delighted with the bills you introduced to permanently bar the contracting out of these jobs, and we support that. We would like even more stringent restrictions placed on contracting out.

In the essence of time, this concludes my testimony. I will be happy to respond to any questions you may have.

[The statement of Mr. Schwab appears at p. 107.]

Mr. LEATH. Thank you, Don.

As I told Mr. Egan, I think certainly your concerns are our concerns. I hope you will keep the committee advised on your analysis and what you are able to uncover as you go through this very laborious process of trying to determine what the bowels of the bureaucracy over there wants to accomplish with these regulations.

Thank you very much.

Mr. SCHWAB. Thank you, Mr. Chairman.

Mr. LEATH. We appreciate all of our witnesses this morning.

Without objection, the record will remain open for a period of 5 days for the submission of any additional statements.

The subcommittee will stand adjourned.

[Whereupon, at 11 a.m. the subcommittee was adjourned.]

APPENDIX

STATEMENT OF LT. COL. DAVID J. PASSAMANECK, USA, RET.

SPECIAL LEGISLATIVE CONSULTANT

For The
NATIONAL COMMANDER OF AMVETS

Before The

SUBCOMMITTEE ON EDUCATION, TRAINING & EMPLOYMENT

Of The

COMMITTEE ON VETERANS' AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

April 7, 1983

Employment of Veterans in the Federal Government.

Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the American Veterans of World War II, Korea and Vietnam. My name is Col. David J. Passamaneck and I am presently serving as a Special Legislative Consultant to Robert Martin, the National Commander of AMVETS.

AMVETS believes, without reservations, that preference in hiring and retention in the Federal Civil Service is a right for life of war veterans, a right which they have earned through the unparalleled sacrifices which military service demands. The varying levels of sacrifice of individual veterans in no way detracts from the equal jeopardy to which all are subjected when they don the uniform of their country. The preference in favor of the hiring of veterans is one affirmative action program which is based on performance and achievement and not racial or sexual accident of birth.

The tenacious efforts, during the Carter Administration, of various interest groups antithetical to national defense and military service, to curtail, or completely remove veterans preference was consistent with the quasi-treasonous conduct of so many inhabitants of this country during the Vietnam war, conduct which contributed in no small way to the tragic result of that war. Fortunately, those efforts were almost entirely unsuccessful. They only succeeded in scornfully punishing retired

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veterans with the rank of O-4 or above by limiting their use of preference under Public Law 95-454. However, those who would denigrate military service by chipping away at veterans preference, have not let up in their incessant efforts.

Even more insidious than the campaign to legislate curtailment of veterans preference are the widespread practices throughout all branches of the Government to effectively thwart the intent of the veterans preference laws by systematic hiring and promoting nonveterans in preference to equally or more qualified veterans. A cursory examination of the hiring and promotion practices of the VA Central Office and the Board of Veterans Appeals, for example, makes one wonder whether veterans preference is not just a public relations gimmick rather than an operative policy, at least at the higher levels of the Government.

One of the most effective methods of undermining veterans preference has been the practice of contracting out for services, particularly in those fields of employment which have traditionally been subject to absolute preference for veterans. The Veterans Administration has been prominent among the agencies using this back-door way to avoid veterans preference.

AMVETS advocates the repeal of the restrictions on veterans preference enacted as Public Law 95-454 and opposes all efforts to curtail or abandon the current preference for veterans in Federal hiring and retention, regardless of any racial or sexual considerations which may form elements of other legislative programs. Preference in Federal hiring and retention for all war veterans, regardless of race or sex, has been an honored keystone of our national policy since the close of World War II. Let's keep it that way and strengthen the policy where necessary.

This concludes my testimony, Mr. Chairman, and I will be happy to respond to any questions.

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April 7, 1983

Lt. Col. David J. Passamaneck, USA, Ret.
Legislative Director
AMVETS
4647 Forbes Blvd.
Lanham, MD 20801

Dear Col. Passamaneck:

I regret that time did not permit asking you all of the questions that the members of the Subcommittee had planned to submit to you at today's hearing.

It will be appreciated if you will answer these questions as expeditiously as possible. The questions, together with your answers, will be made a part of the hearing record.

1) The VA has consistently been one of the major Federal employers of veterans; new hires in FY 1981 included 15,401 veterans. As of September 30, 1981, 6 percent of all VA employees were disabled veterans and 18 percent were Viet-Nam era veterans. Veterans constituted 68 percent of all male employees. Of these, 53 percent served during the Viet-Nam era, and 17 percent were disabled.

With this background, what is the basis of your statement that a cursory examination of the hiring and promotion practices of the VA Central Office and Board of Veterans Appeals may not reflect a commitment to veterans preference. Would you be more specific regarding this charge.

2) Also, on page 2, you characterize the VA as being prominent among agencies using contracting out as a means to avoid veterans preference. Are you familiar with the provision of Public Law 97-306, which precludes contracting of services determined to be direct patient care, or if not direct patient care, then the law requires that after a cost comparison study the service must be at least 15 percent less expensive than if performed by Federal employees?

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Don't you think that this requirement of Public Law 97-306 has stopped the Veterans Administration from losing a lot of employees, which includes a lot of veterans?

Sincerely,

MARVIN LEATH
Chairman
Subcommittee on Education,
Training and Employment

AMVETS
American Veterans of World War II Korea-Vietnam
National Headquarters
4647 Forbes Boulevard, Lanham, Maryland 20706 (301) 459-9600

DAVID J. PASSAMANECK
Lt. Col., USA, Ret.
NATIONAL LEGISLATIVE DIRECTOR

June 29, 1983

The Honorable Marvin Leath
Chairman, Subcommittee on Education
Training and Employment
House Committe on Veterans Affairs
335 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

I regret the tardiness in my reply to your letter of 7 April 1983, a copy of which is enclosed. The delay was required in order to obtain the necessary information (also enclosed) from the VA to enable me to fully reply to your questions.

My statement at the oversight hearing on veterans preference regarding VA hiring and promotion practices at Central Office and the Board of Veterans Appeals appears to be substantiated, at least as far as hiring practices are concerned for the past five years. In each of the years 1978 through 1983, non-veteran hires in the Administrator's Office, Board of Veterans Appeals, General Counsel and elsewhere in Central Office outnumber veteran hires by well over two to one. It is particularly ironic that this startling advantage for non-veterans should exist in the central policy making echelon of the VA. This is the situation to which I was referring in my testimony.

Although veterans seem to have done much better on promotions to GS-13 and above, than in the hiring area, the ratio advantage on promotions is, in every year, substantially less than the two to one advantage of non-veterans in hiring. Since the promotions to the "super" grades represent a large proportion of older veterans, as compared to the hiring figures, it is also apparent that the VA's Central Office personnel policies are decidedly biased against the younger, Vietnam veterans. We certainly should have expected that the figures in the VA, of all places, would have been substantially more favorable to veterans.

As Mr. Rudd indicates, substantiation of my statement about contract services does not appear to be possible, although I note that the VA does not offer any statistics one way or the other, on this issue.

Sincerely,

DAVID J. PASSAMANECK
Lt. Col., USA, Ret
National Legislative Director

Encl: (2)

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Office of Personnel
and Labor Relations

Washington DC 20420

Veterans
Administration

JUN 24 1983

In Reply Refer To: 055B

David J. Passamaneck
National Legislative Director
AMVETS
4647 Forbes Boulevard
Lanham, MD 20706

Dear Mr. Passamaneck:

This is in further reply to your letter dated April 13, 1983, concerning the employment and promotion of veterans in the Veterans Administration.

We have been able to gather most of the statistical data you requested through a special computer run, and it is enclosed in chart form. The figures represent a five year period beginning in 1978. However, data for portions of that 5 year period are not available, and are so noted on the charts for each year.

As you will see from the data, our efforts to enhance the employment of veterans have resulted in significant numbers of veterans being employed and promoted in our Central Office; this has been accomplished during years when there have been numerous hiring restrictions and limitations due to various economic conditions.

Addressing your concerns about contracting out to fill certain vacancies, I hope the following information will be helpful. Generally, contracting for services within the VA is either for commercial or scarce medical services. Normally, we contract for scarce medical services only if there are no well-qualified candidates available for VA employment.

Contracting for commercial services requires a comparison between the costs of in-house operations and the costs of contracting before converting to contract any service with annual operating costs of $100,000 or more. Thus far, we have not contracted for any commercial service as a result of a cost comparison. Therefore, such contracting has been limited to very small or short-term activities which usually involve a very limited number of positions.

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David J. Passamaneck

Because the VA has a highly decentralized system of resource management, there is no practical way of collecting the data you requested regarding the number of positions VA-wide which may have been eliminated due to contracting out for services.

As you will note from the charts, there are a number of instances when the data for the number of accessions in the Excepted Service includes persons in special employment programs. These include the Stay-in-School, Junior Fellow, and Summer Employment Programs. The majority of these employees have come to work directly from high school and have not yet had the opportunity for military service. Unfortunately, due to the nature of our computerized information gathering system, we are not able to separate these figures out of the totals for non-veteran accessions.

If you have any questions, please feel free to call Richard L. Norman, Director, Central Office Personnel Service. He can be reached on 389-2694.

Sincerely,

Michael Rudd

MICHAEL RUDD
Director of Personnel
and Labor Relations

Enclosures

NOTE: Excepted positions in the VA include attorneys, persons given Veterans Readjustment Appointments (VRA's), Schedule C appointees, Title 38 employees (which includes Physicians, Dentists, and Nurses), and persons appointed under various programs for the handicapped. Plus, a large number of excepted positions are filled by young people in various special programs for the disadvantaged, such as the Stay-In-School (SIS), Junior Fellows and Summer Employment Programs.

Total Number of Accessions of Veterans/Non-Veterans in Excepted Positions

YEAR	VETERANS	NON-VETERANS (Regular Employees)	NON-VETERANS (SIS, Junior Fellows and Summer students)
1978*	29	28	60
1979**	39	39	70
1980***	34	60	68
1981****	10	12	37
1982	38	50	45
1983 (through March 1983)	8	7	42
TOTAL	158	196	322

* Figures not available for first two quarters
** Figures not available for 4th quarter
*** Figures not available for 1st quarter
**** Figures not available for 3rd quarter

Accessions

Number of Veterans/Non-Veterans By Department and Staff Office*

* (Please note: These figures include the Stay-In-School, Junior Fellows, and Summer Program employees in the numbers stated in the preceding chart. We are unable to break those figures out)

1978

(Figures not available for first 2 quarters)

Office	Veterans	Non-Veterans	Total
Administrator	1	2	3
Board of Veterans Appeals	8	-	8
General Counsel	2	2	4
Elsewhere	18	84	102
TOTAL	29	88	117

Accessions Continued

1979

(Figures not available for 4th quarter)

Office	Veterans	Non-Veterans	Total
Administrator	1	3	4
Board of Veterans Appeals	11	5	16
General Counsel	4	7	11
Elsewhere	23	94	117
TOTAL	39	109	148

Accessions Continued

1980

(Figures not available for 1st quarter)

Office	Veterans	Non-Veterans	Total
Administrator	2	1	3
Board of Veterans Appeals	3	15	18
General Counsel	2	7	9
Elsewhere	27	105	132
TOTAL	34	128	162

Accessions Continued

1981

(Figures not available for 3rd quarter)

Office	Veterans	Non-Veterans	Total
Administrator	4	11	15
Board of Veterans Appeals	3	1	4
General Counsel	-	3	3
Elsewhere	3	34	37
TOTAL	10	49	59

Accessions Continued

1982

Office	Veterans	Non-Veterans	Total
Administrator	4	7	11
Board of Veterans Appeals	12	20	32
General Counsel	1	6	7
Elsewhere	21	62	83
TOTAL	38	95	133

Accessions Continued

1982

Office	Veterans	Non-Veterans	Total
Administrator	4	7	11
Board of Veterans Appeals	12	20	32
General Counsel	1	6	7
Elsewhere	21	62	83
TOTAL	38	95	133

Accessions Continued

1983

(through March 1983)

Office	Veterans	Non-Veterans	Total
Administrator	1	1	2
Board of Veterans Appeals	3	2	5
General Counsel	-	4	4
Elsewhere	4	42	46
TOTAL	8	49	57

Total Number of Promotions (GS-13 & above) of

Veterans/Non-Veterans

YEAR	Veterans	Non-Veterans	Total
1978*	95	58	153
1979**	194	98	292
1980***	183	132	315
1981****	96	47	143
1982	125	113	238
1983 (through 3/83)	39	32	71
TOTAL	732	480	1,212

* Figures not available for first 2 quarters
** Figures not available for 4th quarter
*** Figures not available for 1st quarter
**** Figures not available for 3rd quarter

Promotions (GS-13 & above)
Number of Veterans/Non-Veterans by Department & Staff Office

1978 (Figures not available for first 2 quarters)

Office	Veterans	Non-Veterans	Total
Administrator	1	2	3
Board of Veterans Appeals	6	-	6
General Counsel	3	-	3
Elsewhere	85	56	141
TOTAL	95	58	153

Promotions (GS-13 & above) continued

1979 (Figures not available for 4th quarter)

Office	Veterans	Non-Veterans	Total
Administrator	2	-	2
Board of Veterans Appeals	12	2	14
General Counsel	17	4	21
Elsewhere	163	92	255
TOTAL	194	98	292

Promotions (GS-13 & above) continued

1980 (Figures not available for 1st quarter)

Office	Veterans	Non-Veterans	Total
Administrator	1	-	1
Board of Veterans Appeals	15	6	21
General Counsel	6	5	11
Elsewhere	161	121	282
TOTAL	183	132	315

Promotions (GS-13 & above) continued

1981 (Figures not available for 3rd quarter)

Office	Veterans	Non-Veterans	Total
Administrator	2	-	2
Board of Veterans Appeals	6	1	7
General Counsel	3	-	3
Elsewhere	85	46	131
TOTAL	96	47	143

Promotions (GS-13 & above) continued

1982

Office	Veterans	Non-Veterans	Total
Administrator	2	2	4
Board of Veterans Appeals	14	12	26
General Counsel	6	7	13
Elsewhere	103	92	195
TOTAL	125	113	238

Promotions (GS-13 & above) continued

1983

Office	Veterans	Non-Veterans	Total
Administrator	-	-	-
Board of Veterans Appeals	-	-	-
General Counsel	1	1	2
Elsewhere	38	31	69
TOTAL	39	32	71

STATEMENT OF DONALD J. DEVINE
DIRECTOR
U.S. OFFICE OF PERSONNEL MANAGEMENT

BEFORE THE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON EDUCATION, TRAINING, AND EMPLOYMENT
U.S. HOUSE OF REPRESENTATIVES

OVERSIGHT HEARING ON
EMPLOYMENT OF VETERANS IN THE FEDERAL GOVERNMENT

April 7, 1983

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to appear before you to discuss OPM's program to improve employment opportunities for veterans in the Federal Government.

During the time I have served as Director of OPM, the Administration has taken major steps in protecting and extending the rights of veterans in the Federal service. Veterans have earned a special right to job opportunities within the Federal Government, and I am determined to see that their rights are protected.

I have established the practice of meeting regularly with officials of major veterans' organizations from my first days at OPM. I have spoken at national conventions of most of the veterans' organizations and have continued to emphasize and demonstrate this Administration's responsiveness to veterans' concerns. Further, at my direction, my Associate Director in charge of veteran employment programs meets between my regular meetings with representatives of veterans' organizations so that a continuing dialogue on veterans' concerns is maintained between OPM and veterans' groups.

The Reagan Administration is committed to veterans' opportunities in the Federal Government. We live up to the spirit and letter of the Veterans' Preference Act. In our view, both veterans and the Government benefit from veterans' preference.

On one of my first trips to Capitol Hill upon becoming OPM Director, I testified before this Subcommittee in favor of extending the Veterans Readjustment Appointment (VRA) Program. On November 3, 1981, the President signed this extension into law.

The VRA Program permits agencies to hire eligible veterans without going through the regular competitive process. The noncompetitive VRA authority leads to a permanent appointment upon satisfactory completion of service and training or education.

We have taken steps to encourage agencies to exercise their authority to hire disadvantaged and disabled Vietnam era veterans under this program. These steps have included revising our regulations and guidance to agencies, providing veterans with information on the VRA Program and meeting with Federal officials to advise them how to use this authority. We have also developed and issued an attractive recruiting poster for use by Federal agencies. By all indications, this program has been a great success. Through it, many qualified and deserving veterans have been given the chance to join the civil service. I know from my own experience at OPM that those selected under VRA are of a high caliber and are daily making important contributions in Government service.

Although there have been personnel cutbacks in the Federal Government, we have not reduced the rate of appointments under the VRA authority. Our most recent data on Vietnam era veteran hiring show that VRAs continue to represent

5 percent of all Government new hires, with 7,400 VRA hires being made in the first half of fiscal year 1982 alone. Approximately 35 percent of these were minorities and 9 percent were women. Since the program began a decade ago, more than 190,000 Vietnam era veterans have entered Government service through veterans readjustment appointments. This, of course, is not the only avenue for veterans to gain entry into the civil service. In fact, of all new executive branch hires, in the first half of fiscal year 1982, 32 percent are veterans. This represents 47,800 new hires in fiscal year 1982.

OPM actively participated in the activities during the Salute to Vietnam Veterans Week last November. Our Federal employment literature was available at strategic locations throughout the city. We held an Open House, and we provided special veteran employment counseling sessions during the Week.

As a result of these efforts, veterans' organizations and other Federal agencies are giving our programs a great deal of attention in their publications and newsletters.

In addition to VRA, we are building on other veterans' hiring programs. For example, we are promoting the use of the special noncompetitive temporary appointments for severely disabled veterans, that is, those who are 30 percent or more disabled. This remains a high priority at OPM. Disabled veterans holding these temporary appointments may be given regular appointments at the agencies' discretion. During the first half of fiscal year 1982, 1,600 severely disabled veterans were appointed, 750 of whom received special noncompetitive temporary appointments. During the entire FY 1981, 1,000 of the 3,100 severely disabled veterans who were hired received special noncompetitive temporary appointments. The total of 3,100 selections in FY 1981, under this Administration, was up 80 percent over the preceding year.

In the past, veterans' organizations had complained that oversight was not exercised over veteran appointments. Since becoming Director of OPM, I initiated a policy by which our Agency Compliance and Evaluation unit now includes in its reviews of agency personnel practices a regular assessment of how effectively agencies are applying various authorities to maximize the hiring of veterans.

In order to ensure that veterans were given the attention they deserve in Federal affirmative action plans, OPM assumed responsibility for oversight of programs for hiring, placement, and advancement of disabled veterans in the civil service in 1982. The Equal Employment Opportunity Commission (EEOC) performed this responsibility in the past. Actually, OPM and EEOC shared duties in this area in FY 1982, but now OPM has taken full responsibility.

While we were sharing responsibility with EEOC during FY 1982, OPM personnel participated in EEOC's reviews of agency affirmative action programs for handicapped individuals, including disabled veterans. The results of OPM's participation with EEOC have been incorporated in EEOC's FY 1982 annual report on the employment of handicapped individuals, including disabled veterans.

We have moved ahead aggressively in carrying out our responsibility for the Disabled Veterans Affirmative Action Program (DVAAP). We published final regulations in the Federal Register on January 4 of this year. Each agency in the executive branch of the Government was required to have affirmative action program plans in place by January 30 of this year.

Our regulations and guidance specifically are devised to give agencies flexibility in meeting the aims of the program. We do require agencies to analyze their work force data on the employment of disabled veterans, identify

deficiencies in the employment and advancement of these veterans, devise corrective actions and implement these planned actions. We also require agencies, at the national headquarters level, to appoint a high level official to oversee DVAAP's implementation.

We have taken positive steps, however, to make things easier for agencies to implement our requirements efficiently and effectively. We have not required quotas, or rigid goals and timetables. These too often become floors and restrict opportunities rather than promoting them. We do not require agencies to conduct extensive comparison of general employment statistics with their employment figures on disabled veterans. Rather, we have provided each with a statistical picture of their disabled veteran employment situation from our Governmentwide automated data system. This allows them to assess where they are and where it is feasible to go in the future.

Also, we have left it to agency discretion, subject of course to OPM review, to determine for which installations or organizations below the headquarters level they will have separate plans. This gives agencies the flexibility to tailor their DVAAP plans to their agency's particular situation.

Our streamlining activities allow agencies more time and effort to get the job done, rather than spending excessive amounts of time computing statistics and completing forms.

Right now, we are in the process of reviewing selected agency plans, with a view to calling attention to the best agency programs and sharing them with other agencies. We want to catch problems in the very beginning. After our review we will develop a comprehensive guide by which OPM regional evaluators can assess agency DVAAP performance in the field.

Our regulations require all executive branch agencies to submit annual accomplishment reports to us by December 1 of every year. These will be analyzed and our assessments will be transmitted to you as part of the semiannual and annual reports required by title 38 of the United States Code. Through these efforts, we look forward to an improved employment picture for disabled veterans, without the controversy and negative effects too often associated with "affirmative action by the numbers."

During 1982, the Office of Personnel Management issued regulations establishing a noncompetitive appointment authority for filling professional and administrative positions in the Government which had formerly been filled from the Professional and Administrative Career Examination (PACE). That action was taken as a result of the Decree in the civil action, Luevano v. Devine. In our instructions to agencies regarding the use of the special appointing authority we indicated that "agencies must observe the principle of veterans' preference as far as administratively feasible."

The term "administratively feasible" has long been used for the application of veterans' preference to noncompetitive positions. Since noncompetitive positions by definition are not filled through the normal civil service process, other methods of applying veterans' preference may need to be used. I have consistently taken the position that veterans' preference must be applied when filling noncompetitive positions.

As a result of concerns expressed by veterans' organizations, I am now issuing a Federal Personnel Manual Letter to clarify and strengthen this provision. For this noncompetitive appointing procedure, OPM now requires agencies to gain OPM approval prior to their use of this authority. Among other things, this

assures that agencies develop and include the process for application of veterans' preference for all these appointments. The effectiveness of the application will be reviewed and assessed in OPM's personnel management evaluations.

In another area, we are moving ahead to assure that spouses and mothers, who are entitled to veterans' preference because of the disability of their veteran relative, receive their legal privilege in a more timely fashion. We are in the process of delegating the adjudication of claims for this type of veterans' preference to our field offices. This will save time and eliminate unnecessary review at the headquarters level.

Related to this is another project which, on the surface, appears to be quite routine but has a large impact on veterans' preference eligibles. We are revising our Standard Form 15, "Claim for 10-Point Veteran Preference." The revision will make it much easier for mothers, spouses, or widows/widowers of disabled veterans to apply for and secure the preference guaranteed under the law.

To further assist agencies in the employment and advancement of veterans, we are developing a one-day training course for staffing and EEO specialists. The course will provide first-hand exposure to veterans' preference, the VRA Program, DVAAP and other relevant programs. The course is designed to help agencies make improvements to their veterans' employment programs, especially in the areas of merit staffing and employee relations. The course will be pilot tested in June and then presented three times in the Washington D.C. area before the end of the fiscal year. Additional sessions will be scheduled to meet agencies' needs.

I want to mention another initiative undertaken by OPM. It's one that holds promise for expanding veterans' employment opportunities and is a source of pride at OPM. Our Western Region, headquartered in San Francisco, began a pilot program for the employment of 30 percent or more disabled veterans in cooperation with the California Department of the Disabled American Veterans (DAV) and the Employment Development Department (EDD) of the State of California. Assistance and support are also coming from the Veterans Employment Service, DOL, and regional officials of the VA. The pilot phase of the program ended successfully in September and it is now a continuing project of OPM.

The concept of the project is quite a simple one. Agencies place job orders with the State employment service. The employment service refers qualified candidates (all 30 percent or more disabled veterans) to Federal agencies. The pool of candidates which the employment service taps comes about because of publicity and recruitment efforts of veterans' organizations, principally the DAV, in this case. OPM publicizes the program and urges the agencies to use it.

I consider this program highly successful not only because of the 123 placements (during the period of May 1982 through December 1982) which have been made, but also because it demonstrates what can happen when voluntary efforts are combined with Government resolve to accomplish a common objective.

The DAV, a volunteer group, is helping us to improve veterans employment opportunities and taxpayers are not being asked to contribute more.

Word of this project has spread nationwide. Similar projects are being developed by other OPM regions. Informal projects and networks are already underway throughout the country. We have begun discussions with personnel in

the Office of the Assistant Secretary for Veterans Employment, of the Department of Labor, to see how we can cooperate even more effectively and efficiently in the employment of disabled veterans.

In your letter of invitation, you expressed special interest in the impact which our proposed reduction-in-force (RIF) regulations will have on veterans' preference eligibles.

Regarding RIF, it is the considered judgment of the Administration that current RIF system must be changed. This is a judgment supported by both recent agency experience and by the expressed concerns of the public, the Congress, veterans' organizations, unions, and others. The Government simply cannot afford to lose its top performers every time there is a cutback nor should it experience unnecessary and costly disruptions of the work force.

The Veterans' Preference Act enumerates the four factors that must be weighed in determining which employees are retained. They are: tenure, veteran preference, length of service and performance. Currently, performance is weighed last and least. The Congress itself clearly recognized the importance of performance in Merit Principle #6 as stated in the Civil Service Reform Act--"employees should be retained on the basis of the adequacy of their performance."

Our proposal would honor the four factors specified in the Act, but would give more weight to performance by reversing the order of consideration of the last two, length of service and performance. Veterans' preference would continue to be considered only behind tenure as it is today. This will minimize agency disruption and limit the negative effect on employees and the agency. Our changes would improve the chances of retaining better performers, including women and minorities who are typically last hired, and retain for veterans with satisfactory performance the preference they have rightly enjoyed in the past.

There are other proposed improvements, such as limits on bump and retreat rights, more flexibility in setting competitive areas and increased notice, that are designed to limit the disruptive effects of RIF while better meeting the intent of the merit principles. Any changes made, of course, will be consonant with this Administration's continuing commitment to veterans.

In my view, there is no group in the country to whom we owe more than those who were willing to risk their lives for their country. I intend to see that disabled veterans receive the priority treatment guaranteed them by law. These priorities are enthusiastically endorsed by Reagan Administration policy. That is not rhetoric, but is backed by the actual success of OPM's efforts over the past two years.

Mr. Chairman, OPM's policies highlight this Administration's concern for the veteran. We look forward to working with this Committee and this Subcommittee in our efforts to continue much needed services to America's veterans.

I appreciate the chance to testify here this morning. I would be happy to answer any questions you may have.

ENCLOSURE

OPM Responses to Questions Raised at an Oversight Hearing on Veterans Employment, April 7, 1983 by the Subcommittee on Education, Training, and Employment; Committee on Veterans Affairs

Q. 1. This Committee was recently contacted regarding training provided to veterans who are VRA appointees. A group of veterans felt that they were being denied the training they believe they are entitled to as VRA appointees. Would you please provide the Subcommittee the training program which must be satisfactorily completed by the VRA appointee in order to be converted to career-conditional status?

A. 1. There is no single, universal training program for VRA appointees. OPM's regulations and program guidance provide the framework on how VRA training should work. A key feature of the VRA Program is its flexibility, i.e., the program is designed to enable the employing agency and the veteran appointee to fashion an individual development program to suit the needs of both agency and employee. The program can include any, or a combination of any of the following: planned on-the-job training, rotational job assignments, off-job classroom training, community volunteer projects, remedial education, vocational education, scientific or technical education, high school or high school equivalency, or college education.

An agency must meet the requirement that training must be in a field which is or will be "directly related to the performance by the employee of 'official duties' for the Government. . ." 5 U.S.C. §4101(4). "'Official duties' are the authorized duties which the employee is presently doing or can be reasonably expected to do in the future. Future duties may be in the sponsoring agency or in another agency. . . at the same or higher level and in a different job or occupation." (FPM Chapter 410, 1-12(a)(9)). Within this guidance, agencies set the specific training that is needed for specific occupations.

Q. 2. Since enactment of the Veterans' Preference Act of 1944, a veteran has had the right to make a personal appearance in presenting an appeal of an adverse action covered by the Act. Veterans are stating that they are losing some of their rights when the proposed regulations would no longer recognize the rights of a veteran for a personal appearance in case the reduction-in-force action is appealed. Would you comment on this?

A. 2. Section 14 of the Veterans' Preference Act (VPA) of 1944 gave veterans the right to make a personal appearance in presenting an appeal of an adverse action covered by the Act. The OPM's reduction-in-force (RIF) regulations are based on Section 12 of the VPA and Section 12 does not provide a statutory RIF appeal right. We authorize a RIF appeal right through our

regulations. Under OPM's current RIF regulations, appellants who challenge RIF actions may appeal to the Merit Systems Protection Board (MSPB) and be granted a personal hearing. This is the case whether there are any material issues of fact involved, or whether any such material issues of fact require a hearing. As a result, the cost of RIF appeals has greatly increased without a concomitant increase in the protection afforded to appellants.

In order to encourage economy and efficiency of Government operations without in any way detracting from the legitimate rights of employees, we are proposing that MSPB render decisions in RIF actions appealed on the basis of the written record when there are no material issues of fact that would require a hearing. Whether and to what extent a hearing should be held in a particular case is a matter that should be determined by MSPB.

Q. 3. If after a RIF action it was decided that either a mistake had been made or the operations of the agency warranted more employees, would employees having been subject to the RIF be recalled, or would the agency simply call for a new register of candidates from the Office of Personnel Management? How would veterans' preference be served either in recalling RIF'd employees or in calling for a new register of candidates?

A. 3. If an agency needs to hire employees after a RIF, either because a mistake was made, or because operations of the agency warrant more employees, the agency must first consult its reemployment priority list. Employees who are separated from the competitive service through RIF are placed on the agency's reemployment priority list (RPL) for that commuting area. The name of a group I (career) employee remains on the list for two years from the date the employee was separated; the name of a group II (career-conditional) employee remains on the list for one year from the date the employee was separated.

When a qualified person is available on the agency's reemployment priority list, the agency may not fill a competitive position by:

(a) a new appointment, unless the person appointed is a qualified 10-point preference eligible;

(b) transfer; or

(c) reemployment of a person not on the reemployment priority list unless the person is a preference eligible or is restored under 5 CFR 353 which pertains to restoration rights of military service personnel and injured employees.

Veterans' preference is served in selection from a reemployment priority list because an agency must give preference to tenure group I (career) employees over tenure group II (career-conditional) employees, and to qualified veterans over nonveterans within each tenure group.

Veterans' preference is served on new registers through the mandatory order of eligibles' standing on registers. OPM enters the names of eligibles on appropriate registers according to their numerical ratings, except that the names of:

(a) preference eligibles are entered according to their augmented ratings and ahead of others having the same rating; and

(b) preference eligibles who have a compensable service-connected disability of 10 percent or more are entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay fixing authorities.

These provisions are in accordance with the VPA.

Q. 4. Your proposal to limit bumping rights, combined with your proposals to permit additional flexibility in establishing competitive areas and competitive levels, is being viewed by some veterans as a means to allow employees to be "targeted" for separation under RIF procedures. Even career employees with compensable service-connected disabilities of 30 percent or more could easily be reached for separation if competitive levels and/or areas were narrowly constructed and bumping rights were limited to the employees' current and preceding grade levels. How are you going to preserve for veterans their preference in retention by these changes?

A. 4. Before running a RIF an agency must first establish a competitive area. Our proposed definition would not permit isolating or "targeting" one or two veterans or even a handful as a competitive area to be abolished. Such a move would require the quick establishment of an "organization" consisting entirely of preselected and specific individuals and if employees were so treated they would surely be successful through the appeal process. There is, in fact, case history (Losure vs. Interstate Commerce Commission, MSPB Docket No. 3511199008, June 2, 1980) that MSPB, under the so-called Losure rule, guards against anything that could be construed as RIF "targeting." Also, OPM could intervene in behalf of veterans in such cases. Moreover, our proposed redefinition of competitive level would broaden the scope of competition and make single person competitive levels very unlikely. The redefinition requires that competitive levels consist of all positions in a competitive area in the same grade which are similar enough in qualification requirements, pay schedules, and working conditions so that an agency may assign the incumbent of one to any of the others without changing the terms of his appointment.

There are other safeguards. Employees in positions in a competitive level are listed on a retention register according to their tenure, veterans' preference, performance category and length of service. The result is that within

each retention group, e.g., group I (career tenure) 30 percent disabled veterans are at the top, career veterans are next and career nonveterans are last. Since employees are released from the bottom up, veterans and 30 percent disabled veterans are the last to be released.

Once employees are released from competitive levels they enter the bump stage. Here the career 30 percent disabled veteran has bump rights over all others including other career veterans. Other career veterans, in turn, have bump rights over other employees. Limiting the bump to no more than one grade or the equivalent below the grade from which the employee was released applies to all employees, not just to veterans, and that leaves no way to "target" the veteran. In summary, at no stage of the RIF process are we failing to recognize and preserve veterans' preference.

Q. 5. Another concern of veterans is the retreat right which under your proposed regulation is construed as denying veterans' preference rather than augmenting it. The theory is that because a person has been promoted according to merit, the limitation on the retreat rights will result in nonpreference eligibles who were not promoted being retained, while those veterans who worked hard and were promoted, will not stay with the Government. Do you agree with this?

A. 5. The retreat right now permits an employee to retreat to a position in a lower grade that is held by an employee in the same subgroup, e.g., a veteran retreats into a position in a lower grade held by a another veteran with lower retention standing. Our proposal permits retreat to a position which requires no reduction or the least possible reduction in representative rate when the position:

(a) is no more than one grade lower, or equivalent, than the one from which the employee was released;

(b) is occupied by an employee in a lower performance category; and

(c) is one that was previously held by the employee within the last five years, or an essentially identical one.

This proposal, by permitting the employee to retreat to any position held (rather than only promoted from) actually broadens the retreat right by opening up positions in the same grade as the one the employee was released from as well as positions "from or through which promoted" as the current regulation provides. This broadens rather than narrows the veterans' retreat right. Since veterans "bump" nonveterans and there is no time limitation on the bump, the change in retreat will not protect nonveterans at the expense of veterans.

Q. 6. Under Section 3312 B of title 5, United States Code, agencies of the Federal Government are prohibited from denying employment to certain veterans purely for medical reasons. How many requests by agencies have been made to pass over veterans whose medical conditions were considered too severe by the agency for employment? How many of those rulings were sustained? How many were overruled? What was the average time required to make a ruling on such an action?

A. 6. For the period January - March 1983:

	Cases Received	Cases Sustained	Cases Not Sustained
All Disqualifications	203	190 (94%)	13 (6%)
All Passovers	114	109 (96%)	5 (4%)
CP-S Passovers*	56	51 (91%)	5 (9%)

*30 percent or more disabled veterans specifically covered by 5 U.S.C. 3312(b).

Average processing time for this period was 4-5 weeks. (Some delays were experienced because we were clearing out a backlog of old cases; that effort is now completed, and current processing of incoming cases is completed in two weeks or less, for cases other than Postal Service. Because of the numbers of cases being received from Postal Service (they are clearing out their backlog of CP-S cases), processing is still averaging four weeks on Postal cases.

United States
Office of
Personnel Management

Washington, D.C. 20415

JUL 14 1981

In Reply Refer To:

Your Reference:

Mr. Ronald W. Drach
National Employment Director
National Service and Legislative
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Disabled American Veterans
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Washington, D.C. 20024

Dear Mr. Drach:

In response to your letter dated April 8, 1981, we have thoroughly analyzed the authority of this agency to review personnel actions taken by the Postal Service.

As you suggested, OPM has given top priority to its review of the Postal Service's regulations implementing 5 U.S.C. § 3312(b). Since forwarding its initial comments on the regulations, OPM has been in close contact with the Postal Service. Dr. George M. Smith, Medical Director, OPM, and Dr. Irvin Hermann, Medical Director, U.S. Postal Service, have met, discussed the issues, and reached an agreement on the proposed regulations. The Postal Service is currently revising its procedures for implementing these regulations so that they are consistent with the provisions of the Rehabilitation Act of 1973, and with section 3312(b).

We are confident that OPM will receive adequate information to review determinations made by the Postal Service that a 30 percent veteran was unable to fulfill the physical requirements of any position for which he or she applied.

It is the opinion of our General Counsel that the Veterans Preference Act and the Civil Service Reform Act provide OPM with authority to review periodically the Postal Service's compliance both with section 3312(b) and with its own implementing regulations. The Office of Personnel Management is currently considering conducting on-site audits in order to ensure that the Postal Service is in compliance.

This agency is committed to enforcing all of the veterans preference provisions throughout the Federal Government; we do not intend to ignore the Postal Service.

I thank you for your expression of interest in this matter.

Sincerely,

Donald J. Devine
Director

July 29, 1981

Dr. Donald J. Devine
Director
Office of Personnel Management
1900 "E" Street, N.W.
Washington, D.C. 20415

Dear Dr. Devine:

On behalf of newly elected National Commander Sherman Roodzant and Past National Commander Stan Pealer, I would like to take this opportunity to thank you for taking the time out of your busy schedule to be with us at our National Convention in Miami, Florida. We especially appreciate your positive remarks regarding President Reagan and your commitment to enforce veterans' preference laws in federal employment.

I would like to acknowledge receipt of your recent letter regarding our concern over the Postal Service's non-compliance with Section 3312(b) of Title 5, U.S. Code. We are pleased to learn that an agreement has been reached between OPM and the Postal Service on proposed regulations. We are however, concerned that approximately 10 months has gone by since the General Counsel's Office of OPM issued a ruling that the Postal Service must comply with Section 3312(b). We believe that the Postal Service should be mandated to adopt already existing regulations promulgated by OPM in this matter and further delay is inexcusable. We therefore urge you to compel the Postal Service to issue regulations immediately.

You also indicate in your letter, that you are considering conducting on-site audits of the Postal Service and we strongly urge you to initiate immediately such actions to assure future compliance by the Postal Service.

Thank you in advance for your anticipated cooperation.

Sincerely,

RONALD W. DRACH
National Employment Director

RWD:dd

BEST COPY AVAILABLE

STATEMENT OF
RONALD W. DRACH
NATIONAL EMPLOYMENT DIRECTOR
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
OF THE
HOUSE VETERANS AFFAIRS COMMITTEE
APRIL 7, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the more than 750,000 members of the Disabled American Veterans, I want to express our appreciation for having the opportunity to appear before you this morning to discuss veteran-related programs administered by the Office of Personnel Management, including the provisions of the Veterans Act of 1944, as amended.

Mr. Chairman, on numerous occasions we have appeared before this Subcommittee critical of the government's implementation of laws, regulations and programs concerning veterans' programs and services. It is indeed a pleasure to come before you today on a more positive note.

Mr. Chairman, we must generally say that Director of OPM Donald Devine and this Administration has acted very positively and openly with the Disabled American Veterans in regard to veterans' preference and other related matters dealing with veterans in the federal work force. This is indeed a refreshing change.

However, Mr. Chairman, we are not without problems. While this Administration has not directly attempted to change veterans' preference, some of the policies, if carried out, will adversely impact on veterans in the federal work force.

Contracting Out

Mr. Chairman, as we know, when Congress enacted the Veterans' Preference Act of 1944 they saw fit to "reserve" certain jobs in the federal sector for preference eligibles. This token effort, however small, was just one indication of this nation's gratitude to job-seeking veterans who returned home following honorable military service. This in no way guaranteed that veterans would receive these jobs but only gave them first priority. Obviously, many of this nation's veterans did not take advantage of this, but many did avail themselves of the opportunity.

The jobs specifically referred to are reserved under Section 3310 of Title 5, U. S. Code and identified as: guards, elevator operators, messengers and custodians. This Section of Title 5 restricts competition "...to preference eligibles as long as preference eligibles are available."

As you know, the original Veterans' Preference Act of 1944 which set aside these jobs was codified into Title 5, U. S. Code in 1966 by Public Law 89-554. By enacting this legislation

Congress reaffirmed the nation's long-standing commitment to its veterans--that is, to provide employment opportunities for certain preference eligibles.

It is our view, Mr. Chairman, that if the federal government contracts these jobs to the private sector, a direct conflict with the expressed Congressional intent would exist. Further, to do so can only result in the heightening of an already deplorable rate of unemployment among disabled veterans.

Mr. Chairman, as we know, some temporary relief was provided when a distinguished member of this Committee, who at the time was Chairman of this Committee during the waning days of the 97th Congress, introduced an amendment which ultimately passed and became part of Public Law 97-377. This amendment prohibited GSA from expending funds for contracting out purposes which would have the effect of eliminating jobs under Section 3310. We thank the distinguished gentleman from Pennsylvania, Bob Edgar, for his quick and effective action. We also want to thank the other members of this Committee for their support.

However, Mr. Chairman, this provision only prohibits GSA from contracting out the duties of these positions and is effective for only one year.

Mr. Chairman, we indicated earlier that a relatively small number of jobs are affected by this. Obviously it is not our intent to solve the cost effectiveness issue surrounding contracting out. We do, however, believe that the insignificant number of jobs affected and protected under Section 3310 moots the issue of cost savings.

We believe that more significant than cost savings is the fact that we are talking about individuals who have few, if any, transferable skills who may lose their jobs as a result of this activity. In all likelihood these individuals would find themselves unemployed with little hope of new employment. This loss strips them of their honor and dignity and places many on welfare.

In response to an inquiry, GSA has informed us that there are 3,490 jobs that fall under Section 3310 within GSA. Of these, 2,023--almost 60%--are held by preference eligibles. Within the preference eligible categories we find the following: 96 veterans with 30% or more disability, 260 are disabled veterans with less than 30% disability, 755 are veterans of the Vietnam Era and 912 are other preference eligibles which include certain spouses with preference eligibility.

GSA has attempted to downplay the adversity associated with contracting out. They remind us that contractors are required to give the displaced employee the "right of first refusal" for job

vacancies associated with the contract. We would like to discuss, Mr. Chairman, one instance brought to our attention where the contractor, Universal Building Services, Inc., based in Cincinnati, Ohio offered a displaced employee a position with the company under the contract.

Regrettably, however, this employee was offered only 20 hours of work per week at a pay rate of $5.59 per hour and 32¢ per hour in benefits.

This basic pay equals $111.80 per week with a supplemental $6.40 per week to "buy" fringe benefits to include retirement and medical coverage.

Mr. Chairman, the fringe benefit portion of the total compensation package is approximately 5.4%.

According to the United States Chamber of Commerce, employee benefits on average equal approximately 33% of payroll dollars. The Chamber also reported that employers spent a weekly average of $127.44 per employee for benefits in 1981. Mr. Chairman, what Universal Building Services, Inc. offers displaced employees is, in our opinion, a disgrace. In essence, an individual in this position would be better off financially to collect unemployment insurance benefits. We also have reason to believe the cited

example is typical rather than atypical. With this type of "fringe benefit," the individual, in all likelihood, will find himself without medical and health insurance and without a retirement plan.

Another area where GSA and the Executive Branch has attempted to assuage the effects of contracting out among preference eligibles is the requirement for federal contractors to take affirmative action to employ and advance in employment qualified disabled and Vietnam Era veterans. This too, Mr. Chairman, in our opinion, is a sham. We believe few, if any, real meaningful jobs are generated by these contracts. We also believe we have sufficient evidence to show that these contractors do not comply with the affirmative action requirements of Section 2012, Title 38, U. S. Code.

Mr. Chairman, we commend you for your actions early in the 98th Congress on this issue. We thank you for introducing H.R. 828 and H.R. 829--which the DAV strongly supports--which would exempt these jobs permanently from being contracted out.

Reductions in Force (RIF)

Mr. Chairman, when this Administration took office, one of its early efforts was to reduce the size of the federal civilian

work force. This was to be accomplished in numerous ways through consolidation of programs, budget cuts and abolition of programs, all of which would result in personnel reductions.

As we know, when a federal department or agency has to "lay off" employees they rely on the Office of Personnel Management's regulations to implement a reduction in force (RIF). During the course of the RIFs, numerous "horror stories" surfaced, i.e. the GS 15 professional who "bumped" down to a GS 4 chauffeur but because of the "save pay" provisions of law maintained the GS 15 salary. Other problems, some real and some perceived, surfaced regarding RIF procedures and their results.

There are those who criticize veterans' preference as being absolute, thereby having any RIF procedure impact adversely on non-veterans. This historically is not necessarily true, as agencies have latitude in terms of the number, types and locations of jobs to be eliminated. As a result of some of these problems, OPM established a task force to review and make recommended changes to the RIF regulations, as well as the Federal Personnel Manual Instructions. The culmination of these efforts was the publication of Proposed Rulemaking that appeared in the Federal Register, March 30, 1983.

Mr. Chairman, we are in the process of reviewing and analyzing these proposed regulations and will be making comments to OPM. We will provide this Committee with a copy.

As you know, officials of OPM and specifically OPM Director Dr. Devine has assured us that veterans' preference will not be changed in the RIF regulation. While we do not have reason to question these assurances, we will be reviewing these proposals very carefully to assure the continuation of preference status in a reduction in force proceeding.

Section 3312

Mr. Chairman, we would now like to discuss Section 3312 of Title 5, U. S. Code. In general terms, this provides a waiver of physical qualifications and requirements as to age, height and weight if these factors are not essential to the performance of the duties. As we know, the Civil Service Reform Act amended Section 3312 and provided additional protections to certain disabled veterans who are applying for federal employment. This change essentially prohibits a federal department or agency from denying employment to a compensably service-connected disabled veteran rated 30% or more solely on the basis of physical requirements of the position, unless the Office of Personnel Management determines that the preference eligible because of that physical disability is unable to perform the duties of the position.

The DAV believes this to be a very effective protection but believes that it does not go far enough. We would certainly support an amendment to this Section to include all compensably disabled veterans. We think this is necessary, Mr. Chairman, to accord equality of protection under the law to all honorably discharged veterans who incur a disease or disability while on active duty. To provide this type of protection against discrimination to a segment of the disabled veteran population denies similar protections to those who may be lesser disabled by percentage, but who may be arbitrarily denied employment on subjective medical requirements.

Also, Mr. Chairman, it has been brought to our attention that by applying this section only to applicants for employment that the full Congressional intent may not be realized. While we do not believe there is sufficient evidence to show that the Congressional intent goes beyond applicants for employment, we do believe that the same type of protection should be accorded those preference eligible federal employees who are seeking advancement, training or transfer. We strongly believe that the same type of protection should be accorded to these preference eligibles and they should not be denied these opportunities based solely on physical reasons.

Affirmative Action

Mr. Chairman, as we know, many changes have taken place within OPM over the past several years. These include the abolition of the Professional and Career Examination and the delegation of recruitment authority to local agency hiring sites.

Most recently, OPM has assumed jurisdiction over the affirmative action requirements contained in Section 2014, Title 38, U. S. Code. This raises questions as to the effectiveness of OPM's monitoring of agencies' compliance with the basic provisions of the Veterans' Preference Act of 1944, as amended, as well as the affirmative action requirements.

The latter concern has been addressed in part by the recent issuance of regulations implementing OPM's responsibilities under Section 2014 dealing with affirmative action. On June 4, 1982, OPM published in the Federal Register "Proposed Rules" and solicited public comment. On July 6, 1972, we provided written comments to OPM and we are pleased, Mr. Chairman, to report that with one minor exception, we fully support the newly promulgated regulations.

That one area of concern is contained at Section 720.304(C)(1) where it is indicated that "...the Office of Personnel Management will review a selection of agency plans each fiscal year." Mr. Chairman, we believe that OPM has an obligation to review all

agency plans as opposed to a select group of agency plans. As we note, the authorizing legislation (Section 2014(d)) states in part "the Office of Personnel Management shall be responsible for the review and evaluation of the implementation of this Section and the activities of each such department, agency and instrumentality...." (emphasis added)

Accordingly, we believe that OPM should not deviate from the original Congressional intent and purpose by selecting only certain agency plans for review.

We were also pleased to note that OPM incorporated into these new regulations the authority for noncompetitive appointments under Section 3112, Title 5, U. S. Code.

As we know, Section 3112 was added to Title 5 by the Civil Service Reform Act of 1978. This allows the non-competitive appointment of disabled veterans rated at 30% or more. The original regulatory authority was published at CFR 5, Section 316.402 titled "Temporary Limited Employment." We expressed our concern to OPM in 1981 because we believed that the Congressional intent for these noncompetitive appointments was very explicit and called for these appointments to lead to "...career or career conditional employment...." It was obvious at that time that the regulatory authority more properly belonged in the affirmative action regulations.

Also, we are pleased to note that OPM has recognized and emphasized that affirmative action does not stop with the initial hiring, but includes advancement opportunities. We have seen, all too often in the past, an agency questioning a disabled veteran's eligibility for affirmative action because that individual had attained a relatively high GS rating. We must remember, Mr. Chairman, that Congress, when enacting Section 2014 did not put a grade "cap" on affirmative action. Accordingly, we were pleased to note that one significant provision of the regulation requires "...agencies shall develop methods to improve the recruitment, hiring, placement and advancement of disabled veterans." (emphasis added)

Mr. Chairman, I would also like to discuss briefly the role of the Office of Veterans Employment at OPM. As we know, there is a staff headed up by a Director, Veterans Employment Programs, at the national office. For years there was an individual assigned to each of the regional offices with a title, Veterans Federal Employment Representative.

I note, Mr. Chairman, and have attached to my statement a directory of OPM regional representatives which was received in my office in October, 1982. It appears from this directory, Mr. Chairman, that OPM has consolidated veterans' employment programs

with all affirmative employment programs with the possible exception of three regions where a separately identifiable person has responsibility for veterans' employment programs and affirmative employment programs. We believe that all federal regions should have separately identifiable individuals with respective responsibilities for these programs.

We also were able to recently obtain a position description with an official title of "Personnel Management Specialist" and an organizational title of Veterans Federal Employment Representative. The duties outlined in this position description raise further questions based on our experience. According to this, the incumbent's responsibilities encompass:

> .Provides consultation services in the resolution of difficult complaints or appeals, or in responding to complex inquiries involving veterans' preference, the veterans' employment program or the handicapped program.
>
> .Knowledge of the legal, regulatory and program aspects of the affirmative employment responsibilities of the federal government.

Mr. Chairman, from several experiences, we have found that all too often the incumbent does not adequately respond to complex issues or inquiries. One example recently brought to my attention is a situation where one of our National Service Officers has requested an investigation by the Regional representative of possible veterans' preference violations. The incumbent has not responded to those inquiries.

In the area of the knowledge of legal, regulatory and program aspects, we have other questions. While we are not necessarily questioning the commitment or dedication of most of these individuals, we must question OPM's overall efforts in that, to our knowledge, there has only been one national training program for these individuals in the last ten years. We believe it imperative that for an individual to stay abreast of legal, regulatory and program changes, that at least annual training sessions are necessary.

That concludes our prepared statement, Mr. Chairman, and again on behalf of the entire membership of the Disabled American Veterans I wish to thank you for allowing us to appear before you today.

If you have any questions we'll be happy to answer them.

* * *

OFFICE OF PERSONNEL MANAGEMENT REGIONAL AEP AND VETERAN REPRESENTATIVES*

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*PLEASE NOTE: The Veteran and AEP Representatives are not counselors. Any questions directed to them should be of the technical advice or assistance area.

AEP = Affirmative Employment Programs
VEP = Veterans Employment Programs

WEV 9/82

Statement of

The American Legion

1608 K STREET, N. W.
WASHINGTON, D. C. 20006

by

PAUL S. EGAN, DEPUTY DIRECTOR
NATIONAL LEGISLATIVE COMMISSION
THE AMERICAN LEGION

before the

SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

on

VETERANS EMPLOYMENT MATTERS
IN THE FEDERAL GOVERNMENT

APRIL 7, 1983

Statement
of
James G. Bourie, Director for Economics
and
Paul Egan, Deputy Director for Legislation
of
The American Legion

before the

Subcommittee on Education, Training and Employment
Committee on Veterans Affairs
U.S. House of Representatives

on

Veterans Employment Matters in the Federal Government

April 7, 1983

Mr. Chairman and members of this Subcommittee:

The American Legion thanks you for allowing us this time to present its views on veterans employment matters within the federal government. Pertinent resolutions adopted by The American Legion are attached with the request that they be made part of the record.

There is no doubt that the Veterans Preferance Act of 1944 represents one of the fundamental keystones of veterans benefits. It is designed to provide an eligible veteran with a hand up, and not a hand out, for the sacrifice made for his country. We can trace a form of veterans preference back to this nation's earliest beginnings, when military service counted favorably in the selections of officials and subordinate employees in the customs service. However, it was not until 1865 that Congress enacted legislation that provided

preferential appointment to civil offices for those veterans honorably discharged as a result of wounds or sickness. Congress subsequently expanded this limited preference in 1876, in 1912, and again in 1919 with the Census Act. But, it was not until WW II that the most dramatic change in veterans preference came about. Riding the crest of patriotic fervor, Congress codified existing law, regulations and executive orders into one solid piece of legislation known as the Veterans Preference Act of 1944 (PL 359). It was a clear and unalterable statement by Congress that veterans were to receive priority in federal employment.

The enactment of the law was not without its opponents. The Civil Service Commission, although in support of the Act in principle, remained opposed to an "absolute preference for all veterans for all positions" as being "inconsistent with a merit system." In 1946, 23 percent of the federal workforce were veterans, by 1949 it had risen to nearly one-half, and has since fallen to nearly 43 percent. And we suspect that as the Korean and WW II veterans retire from federal service, coupled with the Vietnam era veterans not taking advantage of federal employment, the percentage will steadily decline, exposing veterans preference to even greater attacks than the one mounted during deliberations of the Civil Service Reform Act of 1978, when the Civil Service Commission and certain special interest groups launched an unsuccessful Congressional campaign to eliminate veterans preference.

Their rhetorical arguments were tired, and filled with the cliches that The American Legion has heard time and again: veterans "block" registers; lack of advancements for others; discrimination against women and minorities. Even today, those same arguments are being advanced. Yet, in an excellent research paper on veterans preference by Gregory Lewis and Mark Emmert, entitled: Who Pays for Veterans Preference, it is pointed out that total veterans hires are falling, while other groups are increasing through, incidentally, veterans preference, and that the overall impact on veterans in hiring is declining and its benefits are spreading to other groups. Moreover, they state that when race, sex and other factors are held constant, veterans, on average, hold positions one-fourth of a grade less than non-veterans and earn $600 below non-veterans annually. Further, there is an advantage to the veteran only in the first year of federal employment and that any harm veterans preference inflicts on the merit system has little lasting impact.

This last point, Mr. Chairman, is well realized. Veterans preference is considered for entry into the federal workforce as well as in reductions in force, but veterans preference is not considered for advancement or other career opportunities, nor does it extend to the Senior Executive Service, excepted positions, temporary and seasonal employment, or in abolishment of function when one agency's functions are absorbed by another. The American Legion would ask why are these areas

not covered by veterans preference? But, perhaps one of the greatest blows to veterans preference is found in Section 3501 (a)(3)(B) of title 5, USC, wherein those veterans who serve their country 20 or more years are not afforded veterans preference; those who are discharged after October 14, 1976, are likewise not eligible for veterans preference.

Circumvention of veterans preference is most certainly practiced at one time or another by nearly all federal agencies. We know of instances where new hiring registers are called for because veterans have blocked the register in what has become known as the "brutal rule of three"; veterans are placed in newly created jobs only to have them abolished; and of failure to notify the veteran of his/her rights during times of RIF, to name but a few. Perhaps the most glaring example came to our attention in 1980, when Region I of the Fish and Wildlife Services submitted its Affirmative Action Plan to the Equal Employment Opportunity Commission and the Office of Personnel Management. That plan clearly stated that veterans preference was an impediment to the hiring of other groups, and went on to list ways veterans preference can be avoided. The American Legion took both the Fish and Wildlife Service and OPM to task on this matter, resulting in an amended Affirmative Action Plan. We do not foresee a wholesale attack on veterans preference, but we are acutely aware of slow erosion as the implementation of veterans preference is by regulation. Veterans preference is affected by subtle

changes and adjustments by agencies; a perception here, an interpretation there.

Mr. Chairman, with the changes in administrations in 1981, we believed veterans preference entered a new and more positive era. The Honorable Donald Devine, Director of OPM, upon assuming office, met regularly with representatives of the major veterans organizations to identify and correct veterans problems. Mr. Devine maintained this contact until liaison responsibility was given to Mr. Michael Frost. Regular meetings have continued with Mr. Frost in an air of candor and commitment to correct past wrongs towards veterans. The American Legion has enjoyed access to both Mr. Devine and Mr. Frost, as well as to other top OPM officials. Mr. Devine has appeared before the 1981 American Legion National Convention and reiterated his firm support of veterans preference. Through memos and directives, he has so notified federal agency heads that OPM will not tolerate any violations of veterans preference. We see this support through other ways in Affirmative Actions Plans in which disabled veterans are no longer listed last or conveniently forgotten; or in the VRA and 30 percent disabled special hiring programs. Mr. Devine has moved ahead positively in regard to affirmative action for disabled veterans, taking responsibility from EEOC and the U.S. Postal Service, as well as the implementation of new Disabled Veterans Affirmative Action Plan (DVAAP) regulations. Too, the Veterans Programs Office of OPM is fully staffed, while other special interest programs have been cut or dismantled. For the first time in some

period, veterans programs have seemed to enjoy prominence and visibility in OPM. But this is not to suggest that there are no problems; indeed, there are. There are those OPM officials who still remain adverse to the concept of veterans preference; also there are federal agencies who likewise are not taken with veterans preference, and little can be done by OPM. While OPM cannot direct support for veterans preference, it does have the duty and obligation to see that it is carried out correctly.

First implemented by Executive Order in 1970, the Veterans Readjustment Appointments (VRA) program was later codified in PL 95-520 with the Veterans Administration Programs Extension Act of 1978. This program allowed Vietnam era veterans the opportunity to engage in an agency training program and after successful completion be converted into the regular federal workforce, and, since its inception, over 150,000 Vietnam era veterans have enrolled in the VRA. However, as successful as it may appear, it is grossly underutilized by agencies, as it is, by law, discretionary and not mandatory. The problem is further complicated by current personnel ceilings, except for the Department of Defense agencies, and little is known of their VRA programs, if any. For the most part, agencies do not fully know of the VRA and its benefits; if they have a VRA program it is not publicized. The veteran must know whether the agency has a VRA program. Further,

most VRA positions are entry level and not at the maximum GS-7 level. These entry level positions have little career development and advancement opportunities. The program also has what we consider a high separation rate of 20 percent. For the period April 1, 1979 - September 1, 1980, the VRA represented 4.9 percent of total new hires (10,709 of 219,032); the Department of Labor had four; OPM ten; SBA six; yet the VA had 3,798. Moreover, 48.2 percent were made at the GS-3 and 34.7 percent at the WG-1 levels. For the period October 1, 1980 - September 30, 1981, VRA represented 5.3 percent of total new hires (19,975 of 372,463); up .4 percent over the previous fiscal year, and we understand that the most current hiring figures reflect about a five percent representation. In all, not too bad a record given the reductions in the federal workforce that have been taking place.

Many of the problems, Mr. Chairman, associated with the VRA are indeed also identified with the 30 percent disabled hiring program; underutilization, agency ignorance, lack of promotion, personnel ceilings, and discretionary status. Unlike the VRA, the 30 percent disabled program has no GS level ceiling, and it is far more flexible, making it a seemingly attractive hiring tool. But this is not entirely the case. For the period October 1, 1979 - March 31, 1980, only 213 appointments were made, at an average GS level of 4. The VA, again, took the lion's share with 149, with the balance spread over the remainder of the federal agencies. There was, nonetheless,

a dramatic upswing for the period October 1, 1980 - September 30, 1981 when 426 appointments were made during a time of increased federal reductions in personnel.

Both the VRA and 30 percent disabled program are excellent hiring programs for veterans if implemented properly. Mr. Devine has been a strong supporter of these programs, but with agencies reducing, not expanding, personnel, plus the requirements of affirmative action and competition from other groups, the VP4 and 30 percent program stand little chance of truly succeeding. Nonetheless, we urge Mr. Devine to keep informing agencies of these programs, especially DoD agencies, and for those agencies that have a VRA and/or 30 percent program, to make maximum outreach efforts through the Office of Assistant Secretary for Veterans Employment (Department of Labor), veterans organizations and OPM's own Veterans Office and Regional Veterans Representatives.

Mr. Chairman, if there is one issue in federal employment that is the most frustrating to The American Legion it must be the issue of contracting out. Section 3310 of title 5, USC, provides that the positions of guards, elevator operators, messengers, and custodians are to be restricted to veterans if available. This section was enacted into law as part of the Veterans Preference Act of 1944 to assist veterans in a government career; a transitional job which might lead to a more enriching occupation.

It will never be known just how many veterans were assisted

by that restriction or of how many veterans went on to more rewarding careers in federal service because of it. But all of that may come to an abrupt halt if the Office of Management and Budget is allowed to expedite the provisions of Circular A-76.

The issue of contracting out is not new to The American Legion. The first resolution opposing it was adopted at the 1961 National Convention in response to a Bureau of the Budget policy decision articulated in 1955 and reiterated in 1959, "...that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels." Targeted positions were building cleaning, janitorial services and security functions. And since 1961, The American Legion has consistently adopted a national resolution opposing contracting out of those services reserved for veterans. We now maintain no less than twelve full files on the issue covering over twenty years.

The issue is indeed complex and troublesome, but The American Legion believes that the time has come for Congress to address it once and for all. Too many veterans are fearful of their economic futures to allow this issue to continue.

Proponents of contracting out point to efficiency of private services and cost savings. But we are far from convinced that that is indeed true. We have reviewed GSA and other government studies, as well as numerous newspaper articles, union

publications, newsletters and other material to the contrary.

Nonetheless, the real issue is not differing management philosophies. The central issue is Congress's establishment of certain government jobs for veterans on the one hand, versus the elimination of those jobs through non-congressional action on the other. To The American Legion there is no other issue. We must not lose sight of the fact that what is at stake are thousands of jobs held by Vietnam veterans, disabled veterans, and older veterans, many of whom have no other job prospects and who would lose years of seniority and retirement benefits.

The Comptroller General's Report of August 24, 1981, entitled, "GSA's Cleaning Costs Are Needless Higher Than in the Private Sector," lists a total of 13,000 positions: 3,000 for guards, 5,000 custodial workers, 4,000 building maintenance personnel, and 1,000 for motor vehicle operations and maintenance; all but the last category covered by 5 USC 3310.

Thus, 12,000 positions are affected by contracting out and section 3310 and, with the federal workforce of 43 percent veterans, just over 5,000 veterans will be affected. But the veterans distribution is not an even 43 percent for all occupations. In some instances, the occupations at certain locations are all veterans, or nearly all veterans; in others, veterans represent a minority. Typical comments are, "...of 32 persons presently performing janitorial and related services at this... building, 30 are veterans...some have more than 20 years of service, but all will be on the streets come February if OMB

Circular A-76 is complied with"; like the Seattle veterans who write, "...thousands of veterans will be put out of work. A March - May 1983 target date has been set...please act soon to help us vets save our jobs"; or the Oklahoma veterans who state that, "...some of us have reached the age when securing a new job, no matter how the labor market may be, is just about impossible."

Circular A-76 provides that contractors make provision of "veterans preference" and that displaced federal workers be given the right of first refusal for employment for any contract "openings" for which they are entitled. Moreover, federal agencies are to "exert maximum effort" to find suitable employment for any displaced federal employee. The requirements on contractors to observe "veterans preference" is grossly misleading, as there is no "veterans preference" as such in the private sector. What is applicable is 38 USC 2012, wherein federal contractors who hold contracts of $10,000 or more must file available openings with the nearest Job Service office for the hiring and advancement of Vietnam era veterans and disabled veterans only, not WW II veterans or any other category of veterans. Moreover, that section is grossly neglected by the DoL's Office of Federal Contract Compliance Programs, and largely ignored by federal contractors. Too, we surmise that the wage and benefit package offered to displaced federal workers by contractors is significantly less than their current government package. Also, contractors are not required to hire any

displaced federal workers if the contractors have no openings. They could conceivably hire temporary employees to meet the contract, subsequently terminate them, then hire whomever they wish, all in an effort not to hire displaced federal workers.

The federal displaced worker program may be acceptable to those who possess market demand skills, but, in reality, nothing can be done for those who possess minimum demand labor skills; they face unemployment compensation and welfare.

As OMB expeditiously moves ahead to implement Circular A-76, Congress is duty bound to address this issue with all due haste.

We are also, Mr. Chairman, concerned over the proposed changes in reduction-in-force (RIF) regulations as they affect veterans. Since the issue first surfaced last year, The American Legion has been steadily inundated with anxious letters and phone calls from veterans all over the country. Of course, during these difficult economic times many federal workers are indeed fearful. There can be no changes in RIF regulations without infringing upon veterans preference to some degree. After all, the regulations rest upon the Veterans Preference Act, as amended, as this is the only legislative authority for making regulations. However, similar regulations existed before the Act, as legislative authority for retaining veterans goes back to 1876 and a rating system for veterans, and then to all employees, goes back to legislation of 1912 and establishment of a rating system in 1921.

As a general proposition, a RIF is not intended to be an easy management tool; Congress intended it to indeed be disruptive

to an agency while giving preference to veterans in retention standing. Additionally, the Civil Service Reform Act gave OPM, and not federal agencies, the authority to establish competitive areas in dealing with veterans. Since the issue of RIF amendments first came to our attention, we have been in steady contact with OPM. Mr. Devine gave The American Legion assurances that veterans preference will be preserved as Congress intended, but that job performance, and not seniority, will be emphasized.

At a recent OPM briefing for the major veterans organizations, The American Legion was told that new RIF regulations were needed that emphasized job performance and veterans preference in retention; and that current retention practices are out of line with sound personnel principles. Further, there is not a uniform government-wide system to grade federal employees; each agency has its own system. In any event, it was explained that there would be five grades of performance for each competitive area: unsatisfactory, marginal, satisfactory, outstanding, and excellent. Each level would also be divided between veterans and non-veterans, with no distinction being made for disabled veterans, simply veterans and nonveterans. Once an agency begins a RIF, it first identifies the competitive areas, then, starting at the lowest performance level, releases the non-veteran first, then the veteran. It then moves to the next performance level (marginal), again releasing the

non-veterans before the veterans. This process continues to the satisfactory level, where a procedural change then occurs. From satisfactory up through excellent, all non-veterans are released first, and only after those levels are exhausted does the agency move back down to the satisfactory level to begin releasing veterans, moving up through the remaining job performance levels to excellent. OPM thus feels that both job performance and veterans status are preserved.

Mr. Chairman, just last week the long awaited new regulations were published by OPM in the Federal Register. While we have not completed our examination of the new regulations, there are some serious questions about them which must be answered if veterans preference as it is known today is to be assured. In that regard, The American Legion has grave reservations about the new regulations, notwithstanding the verbal pre-publication assurances given us by Messrs. Devine and Frost.

Natually, the most basic question is whether or not the new regulations contradict the Veterans Preference Act, and Congressional intent in the Civil Service Reform act by emasculating veterans retention rights. With more time, the Legion will be in a much better position to answer that question. However, we note with healthy suspicion that instead of tenure, military preference, length of service and performance as the prescribed retention order in section 3502 of title 5, the new regulations will place performance above all else.

This is a source of concern because no objective performance criteria uniformly applied to all federal agencies is evident in the new regulations. We fear that agencies seeking to avoid veterans preference will be tempted to deliberately rate veterans poorly and with impunity. In this event, federal workers generally, and veterans specifically, may become exposed to undue employment instability owing to patronage.

In 1980, OPM approved a Department of Navy demonstration project which was to conclude in 1985. Like the new regulations, that project was to utilize a performance rating system. In our judgment, it might be wise to await, and then evaluate, the results of the demonstration project before launching any government-wide initiative such as is now contemplated. It is noteworthy to add that the Legion testified against the project at an OPM hearing prior to its approval in April of 1980. Our opposition was based on OPM approved project authority to waive current law and regulations during the period of the experiment. Our view then and now is that no agency has a Constitutional right to effectively veto public law through regulations without Congressional consent.

Another question is associated with so-called bumping and retreating rights. Why, for example, has OPM restricted these rights to just one grade level? Current regulations have no such restrictions. Yet another concerns why OPM would eschew current law, chapter 43 of title 5, governing expulsion for poor performance, opting instead for expulsion via RIF.

There are undoubtedly many more equally fundamental questions to be raised and answered. For its part, The American Legion will supply this Committee with its appraisal of the entire matter at the earliest possible date. In that regard, we believe time is of the essence since it is obviously preferable to recognize and alter damaging regulations before they take effect. In this case, those veterans who might be hurt if these regulations take effect prematurely number in the tens of thousands.

In conclusion, Mr. Chairman, should these regulations be shown clearly to be wanting, The American Legion will not hesitate to enlist the leadership of Congress and this committee to overturn them resoundingly.

SIXTY-FOURTH ANNUAL NATIONAL CONVENTION
OF
THE AMERICAN LEGION
AUGUST 20-26, 1982
CHICAGO, ILLINOIS

RESOLUTION NO.: 241

COMMITTEE : ECONOMICS

SUBJECT : SUPPORT VETERANS PREFERENCE IN FEDERAL EMPLOYMENT

WHEREAS, A grateful Nation has, following each war, indicated its thanks to those who bore the battle by providing certain rights and benefits, one of which has been a small advantage when seeking federal employment and in retention of that employment; and

WHEREAS, Absence from the highly competitive job market due to military service creates an unfair and unequal burden on veterans in competing with their nonveteran peers upon completion of military service, which this preference in federal employment is intended to partly overcome; now therefore be it

RESOLVED, By The American Legion in National Convention assembled in Chicago, Illinois, August 24, 25, 26, 1982, that The American Legion strongly support veterans preference in federal employment as provided by a grateful Nation, and oppose any efforts to reduce this preference.

SIXTY-FOURTH ANNUAL NATIONAL CONVENTION
OF
THE AMERICAN LEGION
AUGUST 20-26, 1982
CHICAGO, ILLINOIS

RESOLUTION NO.: 305

COMMITTEE : ECONOMICS

SUBJECT : FULL SUPPORT AND PROMOTION OF THE VETERANS READJUSTMENT APPOINTMENTS (VRA) AUTHORITY

WHEREAS, The Veterans Readjustment Appointments (VRA) is a special hiring program in the federal government for veterans of the Vietnam era; and

WHEREAS, The VRA program was established by Executive Order in 1970 and subsequently codified by PL 95-420 (5 USC 2014(b)(3)); and

WHEREAS, Through the use of this authority over 180,000 Vietnam era veterans have been hired by the federal government, with nearly 75 percent being coverted to career appointment; and

•WHEREAS, Since use of this authority is not mandatory, but discretionary with federal agencies, agencies have uneven hiring records, not being fully aware of the program and/or are resistant to its use; now therefore be it

RESOLVED, By The American Legion in National Convention assembled in Chicago, Illinois, August 24, 25, 26, 1982, that the U. S. Office of Personnel Management be urged to fully support and promote the use of the special hiring program for Vietnam era veterans, the Veterans Readjustment Appointments (VRA) by all federal agencies.

SIXTY-FOURTH ANNUAL NATIONAL CONVENTION
OF
THE AMERICAN LEGION
AUGUST 20-26, 1982
CHICAGO, ILLINOIS

RESOLUTION NO.: 376

COMMITTEE : ECONOMICS

SUBJECT : PROMOTION BY THE U.S. OFFICE OF PERSONNEL MANAGEMENT OF THE SPECIAL HIRING AUTHORITY FOR 30 PERCENT DISABLED VETERANS

WHEREAS, The 30 percent disabled veterans hiring program, codified in 5 USC 3312, is designed to allow federal agencies to hire disabled veterans without competitive examinations, which may lead to career appointments; and

WHEREAS, This special authority is discretionary and not mandatory on federal agencies; and

WHEREAS, Federal agencies have never fully embraced or utilized this program, thus denying many qualified disabled veterans the opportunity for federal employment; now therefore be it

RESOLVED, By The American Legion in National Convention assembled in Chicago, Illinois, August 24, 25, 26, 1982, that the U.S. Office of Personnel Management be urged to fully support and promote the use of the special hiring authority for veterans with 30 percent disability.

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SIXTY-FOURTH ANNUAL NATIONAL CONVENTION
OF
THE AMERICAN LEGION
AUGUST 20-26, 1982
CHICAGO, ILLINOIS

RESOLUTION: 419

COMMITTEE : ECONOMICS

SUBJECT : OPPOSE CONTRACTING OUT OF FEDERAL JOBS RESERVED BY LAW FOR VETERANS

WHEREAS, Title 5, United States Code, 3310 (PL 89-554) provides that the positions of guards, elevator operators, messengers and custodians in federal agencies are restricted to veterans preference eligibles; and

WHEREAS, The federal government has fully sought to see that those positions are given to preference eligibles; and

WHEREAS, Those positions have been contracted out to private contractors, thus denying a preference eligible the opportunity to compete for those positions; and

WHEREAS, The federal government intends to increase, through private contractors, those services, thus circumventing the intent of the above provisions; now therefore be it

RESOLVED, By The American Legion in National Convention assembled in Chicago, Illinois, August 24, 25, 25, 1982, that The American Legion oppose contracting out of those positions as guards, elevator operators, messengers and custodians restricted to veterans preference eligibles as provided in title 5, United States Code, 3310

April 7, 1983

Mr. Paul S. Egan
Deputy Director
National Legislative Commission
The American Legion
1608 K Street, N.W.
Washington, D.C. 20006

Dear Paul:

I regret that time did not permit asking you all of the questions that the members of the Subcommittee had planned to submit to you at today's hearing.

It will be appreciated if you will answer these questions as expeditiously as possible. The questions, together with your answers, will be made a part of the hearing record.

1) On page 6 of your statement, you refer to the VRA program which you state is grossly underutilized, and indicate the VRA program is not publicized - agencies do not fully know of the VRA program. On page 7, you indicate the same problem exists with the 30 percent disabled hiring program. I agree these are both excellent programs. What do you suggest could be done to make these programs known by all agencies? If you have some suggestions, the Subccmmittee would give them most serious consideration.

2) As I understand your statement on the proposed RIF regulations, a major concern is that the authority to establish competitive areas in RIF actions is vested in the OPM and should not be delegated to Federal agencies. Is that correct?

3) Another concern is the five levels of performance would be divided between veterans and non-veterans. How does this compare with the present system?

4) On page 14, you state the new regulations "will place performance above all else", and could adversely affect retention rights of veterans. Does this statement mean you disagree with the new proposed regulations?

5) On page 3 of your testimony, you state that hires of groups, other than veterans, are increasing through veterans preference and that the benefits of veterans preference are spreading to other groups. Would you further explain this situation.

6) You stated in your testimony that the separation rate under the VRA program is 20 percent. Why is this separation rate so high?

7) Regarding the proposed RIF regulations, does Chapter 43 of title 5, in your opinion, provide proper and adequate means to remove poor performance? Does it seem inappropriate that OPM would provide for expulsion for poor performance via RIFs?

Sincerely,

MARVIN LEATH
Chairman
Subcommittee on Education,
Training and Employment

FWS:ek

The American Legion
For God and Country
★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

April 15, 1983

Honorable Marvin Leath, Chairman
Subcommittee on Education, Training
and Employment
House Veterans Affairs Committee
335 Cannon House Office Building
Washington, DC 20515

Dear Chairman Leath:

The following responses to questions asked in your April 7 letter are offered for your perusal and inclusion in the record of your Subcommittee's hearing on veterans preference in federal employment. We very much appreciate the opprotunity to respond to these questions especially since the nature of the questions asked strongly indicate your sincere personal interest in assuring that the new OPM regulations protect the integrity of veterans preference.

1. Both the VRA and 30 percent disabled hiring authorities are discretionary and not mandatory. Therefore, constant promotion must come from OPM. Agencies must be reminded and convinced of the value of these programs.

OPM, through its Veterans Office, should seriously consider maintaining a listing of all agencies and locations where these special hiring programs are utilized. This information could then be shared with veterans organizations, DoL and the VA. Currently, it is unknown what agencies have programs and to what extent.

2. At section 1302(c), title 5, USC, OPM rather than the federal agencies, is to assume responsibility for preference eligibles, including among other things, retention. This, of course, encompasses competitive areas. However, from a practical standpoint, federal agencies have enjoyed the freedom to establish competitive areas regardless of veterans preference.

3. The current RIF system considers four basic employee areas: tenure, veteran preference, seniority and performance. An agency next identifies the Competitive Area and the Competitive Level (grouping of positions). It then formulates a Retention Register (combining the four employee factors). It is at this point that agencies establish Group I (career employees); Group II (probation employees) and Group II (temporary employees). Each Group is then subdivided into: AD (service connected veterans rated 30 percent or more); A (veterans) and B (non-veterans).

4. The Civil Service Reform Act of 1978 (CSRA) established four basic employee considerations: tenure, veterans preference, seniority and performance. In no particular order of importance, all must be observed equally. It is now the intent of OPM to make performance the top evaluation criteria. Congress, through the Veterans Preference Act of 1944 and CSRA of 1978, has made its intentions clear that veterans preference play a crucial role and that veterans enjoy certain unalterable job safeguards that OPM must observe.

Moreover, by placing job performance as the top criteria, it exposes employees to subjective evaluations and, in a sense, dilutes their standing as veterans.

5. Both women and minorities have benefited from veterans preference as their ranks have been increasing in the military. There is now greater representation of women and minority groups in the military. Of course, there is no veterans preference for those serving subsequent to October of 1976, yet those serving prior to that date are indeed afforded veterans preference.

Job protection afforded non-veterans is due, to some extent, to veterans preference as the protections extended to veterans have been, over the years, extended to non-veterans. This is not to suggest that both groups receive equal rights, they don't. But certain veterans benefits have spilled over to other groups. Since we referred to a research paper in our written statement to support the proposition that veterans preference has aided other groups, we enclose a copy of the paper for your review.

6. The separation rate for both the VRA and 30 percent disabled programs runs unusually high for many reasons: inadequate training programs, failure to understand the needs of the disabled, low entry level positions, as well as lacking compassion in understanding the problems of Vietnam era and disabled veterans.

7. The American Legion feels that poor performance employees should not be guaranteed a position simply based on veteran status. It is counter to sound management principles for any organization to carry poor achievers. The CSRA of 1978 recognizer this fact by extending no protection to those rated below satisfactory.

There is no question that employee removal is often a slow and combersome process. Our concern, of course, centers on adequate safeguards as regard veterans. These safeguards shield the veteran from unwarranted performance subjectivity and should be observed.

Sincerely,

Paul S. Egan

Paul S. Egan, Deputy Director
National Legislative Commission

Enclosure

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

STATEMENT OF

DONALD H. SCHWAB, DIRECTOR
NATIONAL LEGISLATIVE SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS' AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

WITH RESPECT TO OVERSIGHT ON EMPLOYMENT OF
VETERANS IN THE FEDERAL GOVERNMENT

WASHINGTON, D. C. APRIL 7, 1983

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States.

My name is Donald H. Schwab, and it is my privilege to serve the more than 1.96 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Mr. Chairman, although neither this Subcommittee nor the Veterans' Affairs Committee have legislative jurisdiction over the laws enacted by the Congress which relate to the employment of veterans in the federal government and the United States Postal Service, VFW appreciates the holding of this oversight hearing.

Veterans preference in federal employment has been the law of the land in one form or another since March 3, 1865 (13 Stat. 571) and the first retention preference for veterans in reduction-in-force actions was established by the act

of August 15, 1876 (19 Stat. 169). The current law governing veterans preference is the Veterans Preference Act of 1944, Public Law 78-359, as amended by Public Laws 92-536 and 95-454. During the 95th Congress when legislation was considered which became the Civil Service Reform Act of 1976, Public Law 95-454, unprecedented pressure was brought to bear on Congress in an attempt to greatly curtail veterans preference and retention and appeal rights. Both the Senate and House of Representatives soundly rejected substantially altering veterans preference including retention and appeal rights.

Mr. Chairman, our National Veterans Service continually monitors veterans preference in federal employment and pursues on a case-by-case basis all alleged violations of veterans preference in hiring, reduction-in-force actions and appeals. To date, they have uncovered no intentional violations of veterans preference although they have discovered incidents wherein veterans who thought they had lost their jobs because of reduction-in-force, had actually been terminated because of abolishment of their position which, of course, is not covered by veterans preference.

In January of this year when the rewriting of retention regulations for reduction-in-force actions by the Office of Personnel Management surfaced, VFW wrote to Edwin Meese, III, Counselor to the President that the rewriting of such regulations would work to the detriment of veterans who are granted special consideration under current law and this assertion was reiterated in testimony before the full Veterans' Affairs Committee in March by our Commander-in-Chief. Subsequently, the Director of Personnel Management, the Honorable Donald J. Devine, responded and stated in part, "Actually, precisely the opposite is the case. For those rated fully successful or above, veterans preference is given priority, regardless of performance rating." Again, on March 28th in a face-to-face meeting with members of our VFW Washington Office staff, Mr. Devine reiterated his assurance that the

proposed revision of reduction-in-force rules would not be detrimental to veterans preference and one of the reasons given in the proposed regulations as published in the Federal Register of March 30 is to "Preserve for veterans their preference in determining retention standing as is currently allowed in the RIF process."

Mr. Chairman, notwithstanding the repeated assurances of Mr. Devine, we are at the moment concerned with several proposed changes. First, we have a very real problem with the proposed revision of bumping and retreating rights which would adversely affect both veterans and non-veterans. Bumping would be restricted to only one grade lower than the position from which the employee is released and the employee could only retreat to that position if he or she had served in that lower grade within the past five years. Such action would work an undue hardship on those with long years of service but insufficient years of service or the age requirement to retire since they would be unemployed at an age and in an era where employment prospects are bleak. While we appreciate that the rationale is to preclude the ridiculous situation of a GS-15 bumping down to a GS-5 and continuing to draw the higher salary, more consideration should be given to the negative effect which would be felt by an employee who held a position more than five years and who is subjected to reduction-in-force. Secondly, more emphasis would be placed on performance than length of service. Our concern in this area is that performance would be determined only by the last performance rating. This stringent restriction would work an undue hardship on disabled veterans and others who during the rating period suffered an exacerbation of their disability, perhaps even requiring periods of hospitalization, which would unrealistically characterize duty performance below that of previous ratings. In addition, in the event there was a change in the reporting official, the rating of the employee could vary with no actual change in the caliber of work performed. Thirdly, a RIF'd employee may only appeal to the Merit Systems Protection Board when he or she has been separated from the rolls

at least 30 days. There is neither a right to a personal appearance before the Merit Systems Protection Board, nor the right to be represented by counsel. The Board would make determinations based upon the record and, obviously, the record resulted in the loss of the job in the first instance. We may have additional concerns, Mr. Chairman, but suffice to say that at the moment we are presently reviewing in depth the proposed changes in reduction-in-force actions and will officially comment thereon before the time tolls on April 29, 1983. If this Subcommittee so desires, we will be very happy at that time to furnish for the record a copy of our comments.

Veterans' Readjustment Appointments under which disabled or educationally disadvantaged Vietnam veterans may be given excepted appointments by federal agencies were first authorized by Executive Order No. 11521, dated March 26, 1970. Subsequently, this authority was enhanced and incorporated in Public Law 93-508 and encoded as 38 USC 2014. More recently, Public Law 97-72 extended this appointment authority until September 30, 1984.

Non-competitive appointments leading to conversion to career or career-conditional employment for veterans rated 30 percent or more disabled by either the Veterans Administration or the Armed Forces are authorized by Public Law 95-454, the Civil Service Reform Act of 1978 and encoded as 5 USC 3112.

Mr. Chairman, Veterans Readjustment Appointments and Non-Competitive Appointments greatly enhance employment opportunities for disabled or educationally disadvantaged veterans. The Veterans Administration and Department of Defense have done an outstanding job in utilizing these programs which could well be emulated by all other departments and agencies throughout the government. By way of example, we realize that the Department of Labor and the Office of Personnel Management have had a lesser turn-over rate of personnel than some other agencies due to imposed

personnel constraints, but we firmly believe they could better utilize Veterans Readjustment Appointments and Non-competitive Appointments in their filling of positions.

Affirmative Action in the hiring, placement, and advancement of disabled veterans by each department, agency and instrumentality in the Executive Branch is mandated by 38 USC 2014(c) and (d). The Office of Personnel Management assumed full responsibility for all aspects of the program on October 1, 1982.

The Office of Personnel Management has only recently taken over the Affirmative Action Program with respect to disabled veterans and we anticipate more positive results in that area in the future.

One of the provisions of Public Law 89-554 is encoded as 5 USC 3310, entitled, Preference Eligibles; Examinations; Guards, Elevator Operators, Messengers, and Custodians. The full text of this section reads: "In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available." Earlier this year, the General Services Administration (GSA) intended to contract out to private contractors some 13,000 custodial jobs of which reportedly 9,000 are filled by veterans and disabled veterans. An amendment to the Continuing Appropriation for Fiscal Year 1983, Public Law 97-377, precludes GSA from further contracting out these jobs during the fiscal year 1983.

Mr. Chairman, two bills introduced by you are presently pending before the Committee on Post Office and Civil Service to make permanent the bar to contracting out of jobs specifically reserved for veterans under the provisions of 5 USC 3310, which are H.R. 828 and H.R. 829. The VFW strongly supports the advancement and enactment into law of such legislation in the absence of greater restriction being imposed upon Office of Management and Budget Circular A-76.

Appended to my testimony is a copy of our current Resolution No. 735 entitled, "Veterans Preference" and one of our priority legislative goals is that veterans preference be strictly enforced in all federal departments and agencies.

Mr. Chairman, the VFW appreciates the continuing oversight of veterans preference by this Subcommittee, especially during the present period of high unemployment among veterans and disabled veterans.

This concludes my testimony, Mr. Chairman, and I will be happy to respond to any questions you may have.

RESOLUTION NO 735

VETERANS' PREFERENCE

WHEREAS, the 78th Congress passed the Veterans' Preference Act of 1944 in June, the month allied armed forces made the Normandy landings at tremendous human cost; and

WHEREAS, the term "veteran' includes every category of society, sex, age, religion, ethnic group, race, and creed; and

WHEREAS, the Veterans of Foreign Wars has been successful in having such laws enacted during the past fifty-five years; and

WHEREAS, Section 712 of the Equal Employment Act of 1972 specifically states that nothing in the Act shall be construed to repeal or modify any Federal, State, Territorial or Local laws creating special rights or preference for veterans; and

WHEREAS, during the past three generations, the United States has become involved in World War II, Korea, and Vietnam; those who served on active duty during these three armed conflicts at the very least experienced a disruption in life style, generally from two to four years at very low pay and at worst were disabled or killed; and

WHEREAS, the Veterans' Preference Law accomplished the legislative purpose of honoring veterans and provides a small advantage to competing for federal and public employment; now, therefore

BE IT RESOLVED, by the 83rd National Convention of the Veterans of Foreign Wars of the United States, that we reaffirm our traditional policy and hereby strenuously oppose any and all attempts to weaken or destroy veterans rights and preference in federal and public employment; and

BE IT FURTHER RESOLVED, that the President and the Congress of the United States reject any and all proposed legislation that would reduce employment opportunities for veterans in the federal and public workforce.

Adopted by the 83rd National Convention of the Veterans of Foreign Wars of the United States held in Los Angeles, California, August 13-19, 1982.

Resolution No. 735

VFW'S RESPONSE TO QUESTIONS SUBMITTED BY
MARVIN LEATH, CHAIRMAN
SUBCOMMITTEE ON EDUCATION, TRAINING AND EMPLOYMENT
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WITH RESPECT TO
EMPLOYMENT OF VETERANS IN THE FEDERAL GOVERNMENT

QUESTION: Your resolution attached to your statement states that the VFW strenuously opposes any and all attempts to weaken or destroy veterans rights and preference in Federal and public employment. Could you provide an example or situation where the "bumping and retention rights" would result in weakening or destroying veterans preference rights?

RESPONSE: The proposed rewrite of retention regulations in reduction-in-force actions stipulates in part that an employee may "bump" only to the next lower grade and "retreat" to that position only if he or she has served in that grade within the last five years. Implementation of this provision would be patently unfair to veterans and non-veterans alike. Employees with long service, particularly those who because of age or tenure do not yet qualify for retirement, in all likelihood have not served in the next lower grade within the past five years. In addition, it is not uncommon for employees with critical skills and higher educational levels to be promoted more than one grade and for these people there would be absolutely nowhere to "bump" or "retreat" since they never served in the next lower grade.

QUESTION: In giving more weight to performance than length of service, would you object to this change if performance was determined by more than just the most recent or last performance rating? Would you object if the veterans preference was based on the performance rating for the last three years?

RESPONSE: Absolutely, since no person's career should be evaluated on a single annual performance report. The last three efficiency reports should be the absolute minimum to be used in evaluating a careerist's performance.

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